

1 STATE OF MINNESOTA DISTRICT COURT
2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
3 - - - - -
4 The State of Minnesota,
5 by Hubert H. Humphrey, III,
6 its attorney general,
7 and
8 Blue Cross and Blue Shield
9 of Minnesota,
10 Plaintiffs,
11 vs. File No. C1-94-8565
12 Philip Morris Incorporated, R.J.
13 Reynolds Tobacco Company, Brown
14 & Williamson Tobacco Corporation,
15 B.A.T. Industries P.L.C., Lorillard
16 Tobacco Company, The American
17 Tobacco Company, Liggett Group, Inc.,
18 The Council for Tobacco Research-U.S.A.,
19 Inc., and The Tobacco Institute, Inc.,
20 Defendants.
21 - - - - -

22 TRANSCRIPT OF PROCEEDINGS
23 VOLUME 34, PAGES 6659 - 6909
24 MARCH 6, 1998
25

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ADVERSE EXAMINATION - ANDREW J. SCHINDLER

1 P R O C E E D I N G S.
2 THE CLERK: All rise. Ramsey County
3 District Court is again in session, the Honorable
4 Kenneth J. Fitzpatrick now presiding.
5 (Jury enters the courtroom.)
6 THE CLERK: Please be seated.
7 THE COURT: Counsel.
8 MR. CIRESI: Thank you, Your Honor.
9 Good morning, ladies and gentlemen.
10 (Collective "Good morning.")
11 ANDREW J. SCHINDLER
12 called as a witness, being previously
13 sworn, was examined and testified as
14 follows:
15 ADVERSE EXAMINATION (cont'd)
16 BY MR. CIRESI:
17 Q. Good morning, Mr. Schindler.
18 A. Good morning.
19 Q. Sir, can you direct your attention to Exhibit
20 14303, which would be in volume two. It's toward the
21 front, sir.
22 A. Yes.
23 Q. Now sir, you would agree that if smokers are
24 addicted, that their free choice would be impaired;
25 correct?

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1 A. If they were. But I don't believe they're
2 addicted. I believe they have free choice to start
3 smoking, and I believe they have free choice to quit

4 smoking.
5 Q. And direct your attention to Exhibit 14303,
6 which is a memorandum to Mr. Kloepper from Mr.
7 Knopick of The Tobacco Institute. Have you seen this
8 document before?
9 A. I don't believe I've seen this particular
10 document.
11 Q. It's dated September 9th, 1980; correct?
12 A. Yes, sir.
13 Q. And you'll see in the first paragraph that Mr.
14 Knopick is attaching a technical review of the
15 conference of the National Institute of Drug Abuse,
16 which wanted "addictive" attached -- added to the
17 cigarette warning. Do you see that?
18 A. Yes, I do.
19 Q. Do you know who Shook, Hardy is?
20 A. They're a law firm.
21 Q. Represents the tobacco industry?
22 A. Yes. I believe -- I believe they represent
23 Philip Morris.
24 Q. And have they represented RJR in the past?
25 A. Not to my knowledge.

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1 Q. Have they represented the Tobacco Institute?
2 A. I do not know for sure. I do not have specific
3 knowledge that they did.
4 Q. Okay. You do know that The Tobacco Institute is
5 supported in part by RJR.
6 A. Of course.
7 Q. Okay. Can you turn to the second page, sir.
8 I'd like to direct your attention to the sentence
9 starting "Shook, Hardy...." Do you see that?
10 A. Yes, sir.
11 Q. "Shook, Hardy reminds us, I'm told, that the
12 entire matter of addiction is the most potent weapon
13 a prosecuting attorney can have in a lung
14 cancer/cigarette case. We can't defend continued
15 smoking as 'free choice' if the person was
16 'addicted.'" Do you see that?
17 A. Yes, I do.
18 Q. And you do know that the internal memoranda of
19 RJR that we reviewed yesterday dealt with the
20 pharmacological, addictive nature of nicotine; do you
21 not?
22 A. We had a lot of documents yesterday. I recall,
23 I guess, some of them -- or one of them talking about
24 pharmacological effect. I don't recall
25 "pharmacological addictive effect."

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1 Q. Do you recall that it was part of the Teague
2 memo talking about the industry being a specialized
3 segment of the pharmaceutical industry?
4 A. I recall Dr. Teague's personal opinion and
5 theory.
6 Q. Do you remember Dr. DiMarco's memorandum?
7 A. Are you talking about one to Dr. DiMarco?
8 Q. Yes.

9 A. I remember there was a document yesterday to Dr.
10 DiMarco.
11 Q. Do you remember the McKenzie document, Exhibit
12 12270?
13 A. Well I -- I remember a document that had John
14 McKenzie's name on it, yes.
15 Q. Do you remember the REST memo?
16 A. Yes, I remember the REST memo.
17 Q. Now yesterday you said you couldn't recall what
18 your superior, Mr. Goldstone, said when he testified
19 in Congress regarding the addictive nature of
20 nicotine; correct?
21 A. I did not have a precise literal remembrance of
22 exactly what he said, you know, whatever -- month or
23 so ago, but I had a rough idea of what he said.
24 Q. And your rough idea was that he testified that
25 nicotine was addictive; correct?

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1 A. My rough remembrance of that was that if you
2 classify -- if the definition for addiction is a
3 habit, then he would say it was addictive under that
4 definition, is what I remember.
5 MR. CIRESI: May I approach, Your Honor?
6 THE COURT: Yes.
7 MR. WEBER: Is that predesignated?
8 MR. CIRESI: It's to refresh his
9 recollection, counsel.
10 MR. WEBER: Your Honor, I object to the use
11 of anything that hasn't been predesignated.
12 It has been? I thought he just said -- let
13 me --
14 Can I just check for a minute, Your Honor?
15 MR. CIRESI: We're only using it at this
16 point to refresh his recollection, Your Honor.
17 MR. WEBER: It was predesignated, Your
18 Honor.
19 THE COURT: Thank you.

20 BY MR. CIRESI:
21 Q. This is a document that's in evidence, sir, it's
22 Exhibit 24299, the transcript of the proceedings of
23 January 29th, 1998 before Chairman Representative
24 Thomas Bliley from Virginia.

25 Do you recall that Mr. Goldstone testified on
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1 that day?
2 A. Sure do.
3 Q. And you recall that the CEOs of the various
4 tobacco companies were asked whether or not nicotine
5 was addictive?
6 A. Yes.
7 Q. And you do know that in 1994 the CEO of RJR
8 testified that tobacco was not addictive; correct?
9 A. He --
10 Yes, I recall that. I have to see his
11 testimony.
12 Q. Okay. In fact the CEOs of every one of the
13 tobacco companies lined up in a row, put their arms

14 up, swore to tell the truth, and said tobacco is not
15 addictive in 1994; correct?
16 A. I believe that's true, yeah.
17 Q. And that was six years after the Surgeon General
18 found tobacco and cigarettes to be addictive;
19 correct?
20 A. Yes.
21 Q. Are you aware of any definitional changes by any
22 health organization between 1994 and 1998 regarding
23 the addictive nature of tobacco?
24 A. No, not that I'm familiar with.
25 Q. Can you direct your attention to page 65 of
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1 Exhibit 24299.
2 A. I'm sorry, what page was that?
3 Q. Sixty-five. You'll find it at the top, sir.
4 A. Yeah, I got it. I'm on page 65.
5 Q. And at the bottom, you see that Represented --
6 Representative Degette -- excuse me --
7 A. Yes.
8 Q. -- is starting to ask some questions?
9 A. Yes.
10 Q. And he states as follows: "The first area I
11 want to talk about is this. Four years ago tobacco
12 company executives came before this committee and
13 under oath like you were asked the question, is
14 nicotine addictive? Each of those executives
15 responded the same, under oath, that nicotine was not
16 addictive.
17 "I'd like to ask each of you the same question:
18 Is nicotine addictive?"
19 And then he says, "I'd like to start with Mr.
20 Brooks," who's the CEO of Brown & Williamson.
21 If you go over to the next page, I want to
22 direct your attention down to Mr. Goldstone's
23 response on page 66.
24 MR. WEBER: Your Honor, I object on this
25 and ask for the rule of completeness that we begin a
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1 little bit -- few lines above so we can get the
2 entire context of the discussion. It was a panel set
3 of answers. I'd suggest we begin with Mr. Brooke's
4 comments a few lines up on page 66 for completeness
5 purposes.
6 MR. CIRESI: Well, Your Honor, I'm asking
7 about Mr. Goldstone at this point. If we want to
8 talk about Mr. Brookes, then we'll get to him when we
9 get to Brown & Williamson.
10 THE COURT: I think it's appropriate that
11 we relate to the testimony of Mr. Goldstone. Mr.
12 Brookes is a completely different issue.
13 MR. WEBER: But my only point on that, Your
14 Honor, was that the questions were following each
15 other and there's a context there. But I -- I can
16 deal with that later.
17 THE COURT: Sure.
18 BY MR. CIRESI:

19 Q. See where Mr. Goldstone says, "Yes, I think
20 under the way people use the term today, I agree, it
21 is." Do you see that?
22 A. Yes.
23 Q. Now, there were no definitional changes that
24 you're aware of between 1994 and 1988 -- '98
25 regarding addiction; were there, sir?

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1 A. No.

2 Q. There were none between 1988 and 1998; were
3 there, that you're aware of?

4 A. I believe --

5 My understanding is there was a definitional
6 change in ninety -- nineteen ninety -- 1988 relative
7 to the 1964 Surgeon General's report.

8 Q. You mean the Surgeon General in 1988 found
9 nicotine addictive and with a similar pharmacological
10 effect as cocaine and heroin? Is that what you're
11 saying?

12 A. No. I'm saying that I believe -- it was my
13 understanding that the Surgeon General had a
14 different definition in 1988 for addiction than the
15 Surgeon General had in 1964, and that's when in the
16 '88 Surgeon General's report that they said it was
17 addictive. It was a definitional change.

18 Q. Well, what definitional change are you referring
19 to, if you know?

20 A. Well, I believe in, you know, 1964, the Surgeon
21 General, in the definition of addiction in those
22 days, referred to things such as intoxication, an
23 ever-increasing demand for the product, that
24 withdrawal or ceasing to use the particular drug or
25 product frequently required hospitalization, that use

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1 of it became debilitating, you could lose your job,
2 become socially dysfunctional. That is my
3 understanding of the term of addiction back in '64,
4 in that period of time. That is what people refer to
5 as the classical definition of addiction. It's
6 certainly the one I grew up with, or my understanding
7 of it. And in 1988 I believe there were changes that
8 basically altered how that was defined, and suddenly
9 intoxication and those types of things were not
10 required, that -- that it's sort of if something is a
11 habit that people enjoy that may be difficult to give
12 up, that you're in a -- in a broader class -- broader
13 definition of addiction. And under those terms, if
14 it's a habit that some people might enjoy that some
15 people might have difficulty giving up, I would say
16 if that's the definition of addiction, that cigarette
17 smoking would certainly meet that. But if the
18 definition of addiction is one of intoxication, of
19 risk of losing your job, socially dysfunctional,
20 needing to be committed to an institution to get off
21 the use of the product, I don't believe cigarettes
22 meet that definition. That's heroin, cocaine,
23 alcoholics. And I just don't believe that cigarettes

24 meet that definition of addiction.
25 Q. Okay. In 1964 did the Surgeon General rely on
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1 the World Health Organization's definition? If you
2 know.
3 A. I'm not sure.
4 Q. In nineteen sixty --
5 Subsequent to 1964, within a short period of
6 time, did the World Health Organization definition
7 change, if you know?
8 A. I do not know.
9 Q. Pardon me?
10 A. I do not know.
11 Q. Did RJR turn over its internal documents to the
12 Surgeon General at any time between 1964 and 1998?
13 A. I have no knowledge.
14 Q. Do you know if the definition for addiction
15 includes physiological effects and psychological
16 effects?
17 A. I suspect it does.
18 Q. Do you know if everybody who's on cocaine has to
19 be hospitalized?
20 A. No, I don't know that.
21 Q. Do you know that smokers who are trying to quit
22 smoking have to be hospitalized in some instances?
23 A. I don't know that. I've never known a smoker
24 who wanted to quit smoking who was hospitalized.
25 Q. Have you read Dr. Hurt's testimony in this case?
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1 A. No, I haven't.
2 Q. If smokers have to be hospitalized, then they
3 fit one of the criteria you just mentioned; is that
4 correct, sir?
5 A. They would. I've never known anybody to be
6 hospitalized to give up smoking. Forty some million
7 people have given up smoking; I don't believe 40 some
8 million people have gone to hospitals to give up
9 smoking.
10 Q. Do you think everybody who's been on cocaine or
11 heroin has been hospitalized to give up it?
12 A. I don't think everybody is, but I'll bet there
13 have been more cocaine addicts go to hospitals to get
14 off of their dependency than there have been
15 cigarette smokers.
16 Q. Have you done a study on that?
17 A. Pardon me?
18 Q. Have you done a study on that?
19 A. No, but I'd bet on it.
20 Q. Have you had the company do any type of study on
21 that?
22 A. Absolutely not.
23 Q. Have you had the company do any type of study as
24 to how many people who are on the addiction of
25 smoking have to seek help from professionals in order
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1 to quit?
2 A. To be hospitalized?
3 Q. Yes.
4 A. I have --
5 We've done no study to find out how many people
6 have been hospitalized to get off of smoking.
7 Q. Now you do know that people use other
8 pharmaceutical aids to quit smoking; don't you?
9 A. Yeah. Patches and nicotine gum.
10 Q. Inhalers?
11 A. I'm not sure. I guess there are inhalers. I'm
12 not --
13 Q. Now you know that people suffer psychological
14 withdrawal symptoms when they try to quit smoking?
15 A. What do you mean by "psychological?"
16 Q. Do they become irritable?
17 A. Some people do. They become irritable if they
18 give up coffee and caffeine, too.
19 Q. Sir, I didn't ask you that.
20 How many people a year does coffee kill?
21 A. I don't know.
22 Q. Has it ever been reported that coffee kills
23 420,000 people a year?
24 A. Not to my knowledge.
25 Q. Have you ever seen any reports like that?

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1 A. No.
2 Q. Have you ever seen a report from the Surgeon
3 General saying that coffee is the number one
4 preventable health disease in this country?
5 A. No.
6 Q. You don't know what the definitions of addiction
7 are; do you, sir?
8 MR. WEBER: Objection, Your Honor, it's
9 asked and answered. We just went through that a few
10 minutes ago.
11 A. I gave --
12 THE COURT: You may answer.
13 Q. Let me ask it this way, sir: You don't know the
14 medical definition is of addiction; do you?
15 A. No.
16 Q. Now at any time between 1954 and 19 -- and
17 today, has RJR warned smokers that smoking is
18 addictive?
19 A. No.
20 Q. At any time between 1954 and today, has RJR
21 directed people to their internal memoranda which
22 shows what RJR knew about nicotine and its addictive
23 characteristics?
24 A. Could you --
25 Could you repeat that question?

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1 Q. Sure.
2 At any time between 1954 and today, has RJR
3 directed the public to RJR's internal documents to
4 show what RJR knew about the addictive nature of

5 nicotine?
6 A. I don't recall the company directing the public
7 to internal documents of the company.
8 Q. Now you said that Joe Camel advertising stopped;
9 is that right?
10 A. Yes. July of last year.
11 Q. July of 1997.
12 A. Yes, sir.
13 Q. So all advertising stopped on that day.
14 A. Well it --
15 That's when we started to make the transition,
16 started to take down billboards, stop print ads, and
17 made the transition to the new ad campaign, yes.
18 Q. So you didn't --
19 There wasn't anything new after that day is what
20 I meant -- I'm asking. Is that right?
21 A. What do you mean by "anything new?"
22 Q. Well there wasn't any new advertising and
23 promotions for Joe Camel after that date.
24 A. All the billboards went down over a period of
25 time, all the print ads, point of sales started to
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1 come down, and the only thing that's going on is we
2 had a Camel Cash catalog for this year, which is a
3 retrospective on all the ad campaigns that the brands
4 had over its 85-year history, and there's three or
5 four or five pages in that catalog that have Joe
6 Camel memorabilia in that catalog, and that will
7 finish in September of this year. That's the only
8 thing that's going on.
9 Q. That came out after RJR pledged not to have any
10 more Joe Camel advertising; didn't it?
11 A. When we withdrew the campaign from the market --
12 from the market or announced that we were doing it,
13 we made it very clear that there would be a Camel
14 Cash catalog. In fact, in the -- I believe we made
15 that known to the attorneys in the Mangini case which
16 we settled in California.
17 So there was no hidden agenda there; that was
18 very open, that we would have this retrospective
19 Camel Cash catalog of which there were a few pages in
20 there of Joe Camel memorabilia. But all the
21 billboards, all the print advertising, point of sales
22 I guess, virtually gone. There could still be a few
23 pieces laying around out there, but Joe's off the
24 broad public landscape.
25 There's a few pages in the Camel Cash catalog
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1 which will end in September, and that will be it.
2 Q. Mr. Goldstone didn't know that was still going
3 on when he testified in front of Congress on January
4 29th; did he?
5 A. No. And it doesn't surprise me that he didn't;
6 he doesn't review all the advertising, promotion and
7 marketing plans that we have.
8 Q. And in fact, he said it shouldn't be going on;
9 didn't he?

10 A. I don't remember that, that it shouldn't.
11 Q. Well why don't you direct your attention to page
12 78 of the memo -- or the transcript you have in front
13 of you, Exhibit 24299.
14 A. What page?
15 Q. Page 78, sir.
16 A. Yes.
17 Q. Start at the top of that page. Representative
18 Brown.
19 A. Yes.
20 Q. "Thank you, Mr. Chairman. I want to follow" --
21 MR. WEBER: Can I object -- can I object to
22 the reading of this question? It's a political
23 speech from a political forum. It doesn't -- under
24 403, it doesn't belong in a courtroom.
25 MR. CIRESI: This is the testimony under
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1 oath, Your Honor, by Mr. Goldstone in response to a
2 question by a member of Congress regarding the
3 representations that all Camel advertising and
4 promotion was done.
5 MR. WEBER: I have no objection, Your
6 Honor, to the Goldstone part, it's the political
7 speechifying.
8 THE COURT: That's something you can argue.
9 But I don't see how we cannot have the question and
10 just get the answer. So just -- I mean you may argue
11 with his form of questioning, but you can
12 certainly --
13 MR. WEBER: Can I make one suggestion on
14 that, Your Honor?
15 THE COURT: Yes.
16 MR. WEBER: Because he could ask just the
17 question right before Mr. Goldstone speaks that
18 begins "And I guess..." because that's the question
19 after all the speechifying before it.
20 THE COURT: Well --
21 MR. CIRESI: Well I don't know what
22 "speechifying" is, --
23 THE COURT: Okay.
24 MR. CIRESI: -- but it's the prelude to
25 asking the question, Your Honor.
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1 THE COURT: I will allow a full question
2 before an answer, and allow you --
3 I mean if you want to argue to the jury later
4 that this representative is a politician, you're
5 welcome to do that.
6 BY MR. CIRESI:
7 Q. "REPRESENTATIVE BROWN: Thank you, Mr. Chairman.
8 I want to follow up with Mr. Goldstone. I didn't get
9 a chance earlier when we were trying to talk and the
10 time ran out. I appreciate your comments that the
11 documents were 'immoral, unethical, illegal'" --
12 Do you see that, sir?
13 A. Yes.
14 Q. Those were the documents we have been viewing

15 here in this courtroom that you've testified to;
16 correct, sir?

17 A. Yes.

18 Q. Those were the documents to the board of
19 directors; correct?

20 A. Yes.

21 Q. -- "I think, is the three adjectives you used.
22 I'm troubled by some things with sort of the
23 re-emergence on the Joe Camel stuff. Your company
24 sent out a direct-mail piece to at least one family
25 in Minnesota called "Camel Cash Timeless

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1 Collectibles, 1913 to 1998."

2 "My understanding is you have retired Joe Camel.
3 He's' gone; he's not coming back....you can send away
4 still, even after Joe Camel went into retirement, you
5 can get a set of tumblers called 'Joe's Beach Club.'
6 You can get Camel T-shirts. You can get Joe Camel
7 jamming on the piano, Joe Camel lighters. And my
8 favorite is you can get a book of the illustrated
9 history of Joe Camel stating, quote, 'Joe may be
10 gone, but he won't be forgotten.'

11 That's troubling when you said publicly you're
12 retiring Joe Camel. At the same time, something
13 really more troubling than that happened in
14 Cleveland, not far from my district, in restaurants
15 and coffee clubs and concert halls all over, where
16 there's something called Camel Clubs that was
17 reported by a Cleveland newspaper when young sort of
18 hip kids in their 20s -- of smoking age, of legal
19 age -- go and sort buddy up with people that may or
20 may not be 18 -- of legal age -- go and buddy up with
21 people that may or may not be 18; may be 16 in some
22 cases -- they're not places that -- that go -- that
23 only 18- or 21-year-olds are allow to go -- and give
24 away cigarettes and get to know the people that work
25 at the restaurants or the bars or the concert halls.

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1 These are the kinds of things still going on.

2 "And I guess I'd like to ask you, in light of
3 your comments of saying that the documents were
4 immoral, unethical and illegal, are these things --
5 is your company going to keep doing the Camel Clubs
6 and keep doing the sales of Joe Camel paraphernalia?

7 "MR. GOLDSTONE: Congressman, I feel quite
8 strongly when I came to a conclusion a number of
9 months ago that our company, for a lot of reasons,
10 should not be using Joe Camel. And I do not expect
11 our company to be using Joe Camel on -- I'm not sure
12 what this is; I'm just looking at it now. But if
13 this exists today, it is not going to exist -- I
14 don't know that I can say tomorrow it will all be
15 gone, but it should be gone. We are not going to use
16 Joe Camel. And the only thing I can tell you about
17 the other activity -- I mean, I do have to say to you
18 that marketing or selling cigarettes in bars or in
19 places where clearly you must be 21 years or older to

20 get in has to be something that we can feel is a
21 reasonable activity if tobacco companies are going to
22 be able to advertise at all, because we know that
23 children are not in those areas."

24 Do you see that, sir?

25 A. Yeah.

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1 Q. And Mr. Goldstone was not aware of the Joe Camel
2 Cash Collectibles; correct?

3 A. Apparently. Or if he was, he forgot. But he
4 makes a statement it will be gone, and it will be
5 gone. It -- it -- there's nothing -- there's no
6 hidden agenda here. It's very open. It's a Cash --
7 Camel Cash catalog. Doesn't have Joe Camel on the
8 cover; it has an ad or something, I believe, from
9 back in the '30s or '40s.

10 Believe it or not, Mr. Ciresi, adult smokers
11 like Joe Camel, like the memorabilia. When we pulled
12 the campaign, all of a sudden some of these old mugs
13 and old ads and stuff started being collectibles and
14 people really liked them. So we're doing a
15 retrospective on 75 years of the brand. We have a
16 few pages in there on Joe, and in September that's
17 it, it's gone. And --

18 Q. "Gone but -- Gone but not forgotten" is what you
19 said in the Cash Collectibles brochure; correct?

20 A. Well it won't be forgotten, but it will be gone.

21 Q. And -- and you had devices in there that could
22 be put around beer cans with Joe Camel; correct?

23 A. Yeah. Some of the stuff that was used over
24 the about eight or nine years that we had the
25 campaign.

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1 Q. T-shirts?

2 A. Yeah.

3 Q. Handlebar T-shirts, pool-player T-shirts;
4 correct?

5 A. Yeah, I believe so. I don't remember all the
6 items in there.

7 Q. Dart games; correct?

8 A. Could be.

9 Q. A beach club tumbler set; correct?

10 A. Yes.

11 Q. Money clips; correct?

12 A. I don't have the catalog in front of me; I'll
13 have to take your word for it, that you're getting it
14 all out of the catalog.

15 Q. Well let me hand you a copy of it, see if it
16 will refresh your recollection.

17 MR. CIRESI: May I approach, Your Honor?
18 (Catalog handed to the witness.)

19 BY MR. CIRESI:

20 Q. That's the catalog; correct?

21 A. Right.

22 Q. And if you turn to the page dealing with Joe
23 Camel, it says "The Joe Years;" correct?

24 A. Yes.

25 Q. All right.

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1 A. Yeah. "Joe Years."

2 Q. And you've got a lot of posters there, the
3 illustrated history of Joe; is that right?

4 A. Yeah.

5 Q. And then if you go over to the next page, you'll
6 see the lighters, dart games; correct?

7 A. Absolutely.

8 Q. And you go to the next page --

9 That's this page here (displaying); correct,
10 sir?

11 A. Yes.

12 Q. Then you go to the next page and you've got
13 ashtrays; correct?

14 MR. WEBER: Your Honor, I'd object at this
15 point.

16 A. Yes.

17 MR. WEBER: If he's using this for
18 refreshment of recollection --

19 THE COURT: Just a moment, please. Would
20 you allow me to rule, please?

21 A. Yeah, ashtrays or --

22 THE COURT: Sir, sir.

23 THE WITNESS: Oh.

24 THE COURT: Would you allow me to rule on
25 the objection, please? Okay. Thank you.

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1 The objection is sustained unless you're going
2 to introduce it as an exhibit.

3 MR. CIRESI: All right. Thank you, Your
4 Honor.

5 BY MR. CIRESI:

6 Q. And there were T-shirts in there; correct, sir?

7 A. Yes.

8 Q. And people will be able to order from this until
9 September of this year; correct?

10 A. Yes.

11 Q. And this went into effect in February of this
12 year; correct?

13 A. I believe that's right, yes.

14 Q. About nine months after RJR said that it wasn't
15 going to use the Joe Camel image any more; correct,
16 sir?

17 A. Yes. And when we said we were pulling out of
18 the Joe campaign, we told people we had this Camel
19 Cash catalog coming out in this retrospective
20 fashion, which also has a bunch of other items from
21 the '40s and the '50s in it, too.

22 Q. Apparently you didn't tell Mr. Goldstone, the
23 CEO, or he forgot when he testified under --

24 A. He might have.

25 Q. Excuse me.

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1 A. He's a busy man.
2 Q. Excuse me.
3 Apparently you didn't tell Mr. Goldstone, your
4 CEO, or he forgot when he testified under oath; is
5 that right?
6 A. He may have forgotten. He may -- he may not
7 have known. I just can't remember.
8 Q. Now you'll recall that yesterday we went over
9 the Frank Statement?
10 A. Yes.
11 Q. The representations that were made by RJR, among
12 others of the defendants, to the public back in 1954;
13 correct?
14 A. Yes.
15 Q. Now you testified that RJR is part of The
16 Tobacco Institute; correct?
17 A. Yes.
18 Q. It has also supported The Council for Tobacco
19 Research since 1954; hasn't it?
20 A. Yes.
21 Q. And that was previously known as the TIRC;
22 correct?
23 A. I believe so, yes.
24 Q. And you know that was formed in 1954 to engage,
25 among -- in, among other things, public relations;

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1 correct?
2 A. It was formed in 1954, from my understanding, to
3 do research into diseases related to smoking.
4 Q. Okay. Can you direct your attention, sir, to
5 Exhibit 18904.
6 A. I'm there.
7 Q. This is a Hill & Knowlton document, sir, that's
8 already been introduced into evidence. Have you seen
9 this before?
10 A. Hmm. This is one I don't think I've seen.
11 Q. Okay. Then let's back up a document and let's
12 go to 18905 first.
13 A. Yes.
14 Q. This is another Hill & Knowlton document dated
15 December 15th, 1953. Have you seen this?
16 A. I don't think so.
17 Q. You are aware, based on your knowledge of the
18 history of the tobacco industry, that in 1953 certain
19 studies were published in Reader's Digest and other
20 places concerning smoking and lung cancer?
21 A. You know, I remember that broadly as part of the
22 historical past of 45 years ago.
23 Q. And at that time that caused great alarm among
24 the tobacco industry?
25 A. I was nine years old at the time. I wasn't

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1 around for the great alarm in the tobacco industry in
2 1953 or '4.
3 Q. Well have you learned about that during the
4 course of your career with RJR?
5 A. No. I don't remember interacting with anybody

6 in or -- in the course of my career who was telling
7 me about the great alarm they had in 1953 over the
8 Reader's Digest articles.
9 Q. Have you learned about the steps the industry
10 took in order to get out information that was
11 entirely pro cigarette?
12 A. In 1950s?
13 Q. Yes.
14 A. I -- I wasn't in the company in the '50s.
15 Q. That's not what I asked.
16 A. I -- you know, there --
17 If we're referring to specific documents, I
18 think we should just go to them. I don't read --
19 I mean I haven't studied 1953 and '54.
20 Q. Well then is your answer no?
21 A. I suppose it is.
22 Q. Well then just say no, sir.
23 MR. WEBER: Object to the commentary of
24 counsel, --
25 A. No.

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1 MR. WEBER: -- Your Honor.
2 Q. Thank you.
3 Have you read Exhibit 18905?
4 A. No, I haven't.
5 Q. Can you go to the first page.
6 MR. WEBER: Your Honor, I'd object to any
7 questioning on this exhibit under Rule 602, which
8 limits testimony to matters of which the witness has
9 knowledge. And in addition, it's cumulative, it's a
10 document that's been gone through before with other
11 witnesses.
12 THE COURT: Not with this witness though.
13 MR. WEBER: And then on Rule 602, Your
14 Honor?
15 THE COURT: Denied.
16 BY MR. CIRESI:
17 Q. Do you see, sir, in the first page, that one of
18 the participants in this meeting at the Hotel Plaza
19 was a group called together by Paul Hahan, president
20 of American Tobacco, and one of the chief executive
21 officers was from R. J. Reynolds?
22 A. Yes.
23 Q. Have you seen this document now before?
24 A. No, I haven't.
25 Q. Okay. You didn't get an opportunity to read

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1 this in preparation for your testimony?
2 A. I just told you I've never seen it.
3 Q. Okay. Can you direct your attention to the next
4 page, and about four paragraphs down under Roman
5 numeral III, "The Industry's Position," do you see
6 the statement, "They feel they should sponsor a
7 public relations campaign which is positive in nature
8 and is entirely 'pro-cigarettes.' They are confident
9 they can supply us with comprehensive and
10 authoritative scientific material which completely

11 refutes the health charges?"
12 A. Yes, I see that.
13 Q. And were you aware that the TIRC, the forerunner
14 of the CTR, was formed in part to carry on public
15 relations functions?
16 A. No, I'm not aware of that. My experience with
17 CTR is we give money to the CTR, and blue ribbon
18 panel of medical research and scientists administer
19 grants throughout the country, Nobel Prize winners
20 and American Academy of Science people that -- that
21 administer that money.
22 Q. Have you ever --
23 A. I have no knowledge of this PR thing back in the
24 '50s.
25 Q. Okay.

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1 A. From what I've seen -- the purpose, as I
2 understand it, is what I've seen carried out, in my
3 experience with it.
4 Q. And sir, have you ever called these Nobel Prize
5 winners and academicians together to have a blue
6 ribbon committee to determine from them whether they
7 believe smoking causes lung cancer?
8 A. No, I've never done that.
9 Q. Have you ever called them together to see if
10 smoking causes chronic obstructive pulmonary disease?
11 A. No, I haven't.
12 Q. Have you ever called them together to see if
13 smoking causes chronic heart disease?
14 A. No, I haven't.
15 Q. Have you called them together to see if smoking
16 causes any disease?
17 A. No, I haven't.
18 Q. Now you do know that back in 1953 and early
19 1954, the companies considered that their own
20 advertising and competitive practices had caused a
21 health problem. You know that; don't you?
22 A. Could you repeat the question, please?
23 Q. Sure.
24 You do know that back in 1953 and early 1954,
25 the companies considered that their own advertising

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1 and competitive practices created a health problem.
2 A. No, I don't know that. I've never heard that
3 before.
4 Q. Nobody ever told you that?
5 A. No. You're the first one.
6 Q. Well, can you direct your attention to page
7 three.
8 A. Yes.
9 Q. And if you look at the second indented
10 paragraph.
11 A. "Distribution" --
12 Q. "Do the companies...." Do you see that?
13 I'm sorry, the further indented paragraph, I
14 should have said.
15 A. Oh, "Do the companies....," is that what

16 you're --
17 Q. Yes.
18 A. Okay.
19 Q. "Do the companies consider that their own
20 advertising and competitive practices have been a
21 principal factor in creating a health problem?
22 "The companies voluntarily admitted this to be
23 the case even before the question was asked."
24 Do you see that?
25 A. Yeah, I see that.

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1 Q. And where in the Frank Statement is the
2 statement that the company's advertising and
3 competitive practices have been a principal factor in
4 creating a health problem?
5 A. Can you repeat the question, please?
6 Q. I will, indeed.
7 Sir, I'll give you an opportunity if you want to
8 read another paragraph in there.
9 A. Well I --
10 Q. If you could -- if you could listen --
11 A. -- I've never seen this before, and you give me
12 a couple of sentences and then start asking
13 questions. I'll have to admit while you were asking
14 the question I was trying to read a little bit of
15 this thing.
16 Q. And I'll give you an opportunity to do that if
17 you want to; otherwise, if you'd listen to my
18 question, we'll be able to move through it a little
19 quicker. All right? Is that agreeable?
20 A. Fine. Go ahead.
21 Q. Where in the Frank Statement did RJR or any of
22 the tobacco companies say that their advertising and
23 competitive practices have been a principal factor in
24 creating a health problem?
25 A. Nowhere that I know of.

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1 Q. In fact, they said that their products did not
2 create a health problem; didn't they?
3 A. I believe they said that they didn't believe
4 that products were injurious to health or something
5 like that.
6 Q. So they said directly contrary to what they said
7 internally; correct?
8 A. I don't know what they were talking about here.
9 I don't know if they were talking about an actual
10 health problem or the problem of the health community
11 attacking them because of the nature of their ads, so
12 I don't really know what they were talking about here
13 in 1953 when I was probably in eighth or ninth grade.
14 I had -- you know, you --
15 You're interpreting this as they were admitting
16 that cigarettes and advertising caused health
17 problems. They could be talking about the problem
18 they had with the health community because of the
19 nature of their advertising. I don't know.
20 Q. Are you done?

21 A. Yes.
22 Q. Okay. But what the document says is that "Do
23 the companies consider that their own advertising and
24 competitive practices have been a principal factor in
25 creating a health problem?

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1 "The companies voluntarily admitted this to be
2 the is case even before the question was asked."

3 That's what the document says; correct?

4 A. I understand that, Mr. Ciresi. This is the
5 first time I have seen this document. This is 45
6 years ago. I have no idea what happened in this
7 meeting. I don't even know who these people were
8 that were in the meeting. And you're asking me to
9 tell you what I think about these two or three
10 sentences in this document. I have no knowledge of
11 what these folks were doing.

12 Q. Now can you go to Exhibit 18904.

13 A. I'm there.

14 Q. Do you know if the companies were faced at that
15 time with a problem of establishing confidence in the
16 companies and the companies' leaders?

17 MR. WEBER: Your Honor, I have the same
18 objections under 602 and cumulative as with the last
19 one.

20 THE COURT: It's denied.

21 A. I have no knowledge.

22 Q. All right. Can you direct your attention,
23 please, sir, first of all, to the second page of this
24 document.

25 Do you know if the companies at this time wanted

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1 a cancer-free cigarette?

2 A. I have no idea.

3 Q. Do you know if Hill & Knowlton interviewed the
4 research directors of the companies?

5 A. I have no idea.

6 Q. All right. Do you see it reported on page two.

7 A. Where?

8 Q. At the top of the page, "The attitude of the men
9 we must directly deal with in the industry is at once
10 interesting, and important for us to understand.

11 This is why notes on the four interviews with
12 'research directors' are given at some length.

13 You'll get from them little real information about
14 lung cancer, pro or con; but you'll find some mighty
15 interesting opinions. One of them said, 'It's
16 fortunate for us that cigarettes are a habit they
17 can't break.'" Do you see that?

18 A. Yes. Whoever said that was wrong. Forty some
19 million people seem to have broken the habit, the
20 volume in the industry has declined 20 some percent
21 since 1982, so obviously this person's forecasting
22 skills were a little limited.

23 Q. Well how many people have died from
24 smoking-related diseases --

25 A. I have no --

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- 1 Q. -- since 19 --
2 Excuse me, sir.
3 A. I have no idea.
4 Q. Excuse me. How many people have died from
5 smoking-related diseases since 1987?
6 A. I have no idea.
7 Q. I suppose they aren't buying cigarettes any
8 more; are they? Are they, sir?
9 A. I don't believe people who are not alive can buy
10 cigarettes.
11 Q. So that volume would go down; wouldn't it, sir?
12 A. Yes, sir.
13 Q. And if schools in states were trying to overcome
14 the advertising of your companies to prevent youth
15 from smoking and youth didn't smoke, that would cause
16 the volume to go down; wouldn't it?
17 A. I don't believe our advertising causes youth to
18 smoke.
19 Q. Well, if the schools in the states were trying
20 to overcome the tendency of people to smoke, young
21 people, for whatever reason, that would cause the
22 volume of smoking to go down; wouldn't it?
23 A. If people stopped smoking, the volume will go
24 down.
25 Q. And your volume went up.

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- 1 A. When?
2 Q. In the last two years. Hasn't it?
3 A. Our volume?
4 Q. Yes.
5 A. Our cigarette volume?
6 Q. Yes.
7 A. No. Our cigarette volume -- I don't know
8 what -- from, say, 1992 to today, has probably gone
9 down maybe 20 percent.
10 Q. The last two years, sir, the volume --
11 A. It's gone down in the last two years, probably
12 about five -- four, five percent.
13 Q. Has your market share gone up?
14 A. No.
15 Q. Did it go up last year?
16 A. Our total market share? No.
17 Q. No, did the market share in any brand go up?
18 A. Oh, yeah. Camel share went up with four to five
19 tenths of a share point.
20 Q. And did it go up from the time the Joe Camel ad
21 came on?
22 A. Yes.
23 Q. Every year it went up?
24 A. Not every year.
25 Q. Almost every year; correct?

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- 1 A. Probably most of the years, but not every year.

2 Q. And it went up in the youngest category; didn't
3 it, sir? Youngest age group?
4 A. Eighteen to 24?
5 Q. Let's take your definition, 18 to 24. Went up
6 every year; didn't it?
7 A. No, I don't think it's gone up every year.
8 Q. Can you think of one year that it didn't since
9 1988?
10 A. Yeah. I believe it actually went down some from
11 ninety through -- '93 through '96.
12 Q. The Camel --
13 A. '93, '94 --
14 Q. Camel --
15 A. Talking about 18 to 24.
16 Q. Camel --
17 A. Yeah, there's some -- there's been some decline
18 in the 18 to 24. After the campaign started,
19 somewhere within a couple years or so, and I'm not
20 sure of the exact dates, it went up to 10 to 13
21 percent of 18 to 24. It's been at nine, it's been at
22 10, it's been at 13; it's bounced around a bit.
23 Q. So --
24 A. It's not been -- it's not been some steady rise
25 in 18 to 24.

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1 Q. It's gone up multiples since before that
2 campaign was put into place; hasn't it?
3 A. I told you it went up from before the campaign,
4 but it has not continued to rise, as you implied in
5 your question.
6 Q. Now if you go back to this document, "'It's
7 fortunate for us that cigarettes are a habit they
8 can't break.'" You can't break --
9 A. What --
10 Q. Excuse me, sir. I haven't finished.
11 A. No, I'm not sure where you are.
12 Q. On page two, the same document.
13 A. Okay.
14 Q. Right where we were.
15 A. You're more familiar with this document than I
16 am, so you have to give me a few minutes to find the
17 place.
18 Q. Did your lawyers give you this document? It was
19 a designated document.
20 A. I had told you when we started here I do not
21 remember seeing this document, and as we've gotten
22 into it I can tell you I haven't seen this document.
23 Q. "'It's fortunate for us that cigarettes are a
24 habit they can't break.'" If somebody can't break a
25 habit, are they addicted to it?

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1 A. I don't agree with that statement.
2 Q. Didn't ask you that.
3 A. Well if somebody can't break a habit -- can't,
4 impossible -- I guess you'd say they were addicted to
5 it.
6 Q. All right. Now is everybody who uses cocaine

7 unable to stop using cocaine?
8 A. No.
9 Q. Is everybody who uses heroin unable to stop
10 using heroin?
11 MR. WEBER: Objection, Your Honor, asked
12 and answered earlier this morning.
13 A. No.
14 MR. WEBER: We went through this.
15 THE COURT: Well this is a little different
16 question.
17 Q. Your answer was no; is that right?
18 A. Yes, it was no.
19 Q. Do you see the next statement, "'Boy! wouldn't
20 it be wonderful if our company was the first to
21 produce a cancer free cigarette.'"
22 A. Yes.
23 Q. "'What we could do to the competition!'" Do you
24 see that?
25 A. Yes.

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1 Q. Did RJR at any time from 1954 forward say that
2 they knew back in 1954 that their cigarettes cause
3 cancer?
4 A. Could you ask me the question again?
5 Q. Yes. At any time since 1954, has RJR said that
6 their cigarettes cause cancer?
7 A. No.
8 Q. Can you go down to the next paragraph. "At the
9 moment, these men feel thrown for a loop. They've
10 competed for years - not in price, not in any real
11 difference of quality - but just in ability to
12 conjure up more hypnotic claims and brighter
13 assurances for what their own brand might do for a
14 smoker, compared to another brand." Do you see that?
15 A. Yes.
16 Q. Now sir, over the years RJR has sold low tar/low
17 nicotine cigarettes; correct?
18 A. Yes. Low tar cigarettes have been on the market
19 since, ah, late '60s, early '70s.
20 Q. And you don't know if those cigarettes are safer
21 because you have no data to confirm that they are
22 safer; correct?
23 A. That's true.
24 Q. That's absolutely true; isn't it?
25 A. That I have no data that says low tar cigarettes

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1 are safer?
2 Q. Yes.
3 A. That's true. I have no data that -- that I know
4 of that says low tar cigarettes are safer.
5 Q. RJR has no data; correct?
6 A. That's right. I don't know of any data RJR has
7 that says low tar cigarettes are safer.
8 Q. You're not aware of any such data that the
9 industry has; correct?
10 A. I'm not aware of any.
11 Q. Are you aware that in this courtroom, RJR is

12 suggesting that low tar cigarettes are safer? Are
13 you aware of that?
14 A. No.
15 Q. If they were, if they're trying to convince the
16 ladies and gentlemen of this jury that they are,
17 there's no data to support that; is there, sir?
18 A. I --
19 MR. WEBER: Objection, Your Honor, --
20 A. I don't --
21 MR. WEBER: -- it's a misstatement of
22 what's been said in this case.
23 THE COURT: I think you'll have to rephrase
24 that question, counsel.
25 Q. I want you to assume that that is what's being
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1 urged in this courtroom. If that is being urged, you
2 know of no data to confirm that; do you, sir?
3 MR. WEBER: Same objection, Your Honor.
4 THE COURT: You may answer that.
5 A. I'm not going to assume that was said in this
6 courtroom. I find it hard to believe that it was.
7 In fact I don't believe it was.
8 Q. Because --
9 A. So why shall I assume something that I believe
10 didn't happen?
11 Q. Well let me --
12 I'm going to ask you two questions on that.
13 Number one, I have a right to ask you to assume. So
14 we'll go forward and say: Assuming that, you know of
15 no data to confirm it; correct?
16 A. I don't --
17 MR. WEBER: I object to counsel's
18 commentary in the preface to the question, Your
19 Honor.
20 THE COURT: No, I think it was necessary to
21 ask.
22 Q. You know of no data to confirm it; do you?
23 A. I don't know of any Reynolds data that says that
24 low tar cigarettes are safer, and I do not assume
25 that that happened in this courtroom.
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1 Q. In fact, you would find that hard to believe
2 because you don't believe it; correct?
3 A. Believe what?
4 Q. That low tar/nicotine cigarettes are safer.
5 A. In the absolute sense that you're defining that,
6 I believe that, you know, basically what medical
7 science has said over the years, that it's a good
8 idea to address the risk in smoking -- cigarette
9 smoke by reducing the tar levels. And we've pursued
10 that over the years; we have cigarettes today that
11 are substantially less in tar and nicotine. I
12 believe in principle they may have or have the
13 potential to reduce the risk. They certainly reduce
14 the compounds that science associates with the risk
15 of smoking. In the absolute sense of a safer
16 cigarette, I couldn't say that. But it reduces tar,

17 reduces compounds that people associate with the risk
18 of smoking.
19 Q. Are you done?
20 A. Yeah.
21 Q. Okay. Let me ask my question again. See if you
22 can answer it.
23 You stated --
24 MR. WEBER: Object to counsel's commentary
25 again, Your Honor.

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1 THE COURT: No, that's not commentary.
2 Q. You stated as follows: "I'm not going to assume
3 that was said in this courtroom. I find it hard to
4 believe it was. In fact I don't believe it was."
5 Isn't that what you said?
6 A. Yeah.
7 Q. Thank you, sir.
8 Now in 1954, were you aware that the problem
9 that was facing the industry was confidence and how
10 to establish it, public assurance and how to create
11 it?
12 A. I was not aware of that in 1954.
13 Q. Did anybody advise you that that was how the
14 industry looked at the health issue at that time
15 before they formed The Council for Tobacco Research,
16 then known as the TIRC?
17 A. I was in Harrisburg, Pennsylvania in grade
18 school in 1954.
19 Q. That's not what I asked you, sir.
20 A. I -- I do not know what you're talking about
21 here in terms of 45 or 44 years ago and conversations
22 between PR firms and executives and scientists in
23 1954. I have no knowledge of what they were doing.
24 Q. Please direct your attention to page four of
25 this exhibit.

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1 A. Yes.
2 Q. Very top. "Problem 1.
3 "The very first problem is to establish some
4 public confidence in the industry's leaders
5 themselves, so that the public will believe their
6 assertions of their own interest in the public
7 health." Do you see that?
8 A. Yes.
9 Q. And by "their assurances" -- excuse me.
10 By "their assertions," that's referring to the
11 industry's leaders' assertions; correct?
12 A. Appears that way. I think it does.
13 Q. And you're an industry leader today; correct?
14 A. Yes.
15 Q. And you're making statements of your interest in
16 the public health; aren't you?
17 A. What do you mean?
18 Q. That you are interested in not selling to
19 children; correct?
20 A. We don't sell to children. We don't market or
21 develop marketing programs for children.

22 Q. And so you're making a statement about the
23 public health and you want people to believe it;
24 correct?

25 A. That's the way we operate the company. It's a
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1 fact.

2 Q. Can you answer my question?

3 A. Well of course I want people to believe it --

4 Q. All right.

5 A. -- because it's the truth.

6 Q. Now let's go on to see what the industry thought
7 of their statements in the past. Do you know if they
8 felt that they tended to twist the facts?

9 A. I don't know if people tended to twist the facts
10 in the past.

11 Q. Can you go to page five. Do you see problem
12 three?

13 A. Yes.

14 Q. "How to validate this message of assurance." Do
15 you see that?

16 A. Yes.

17 Q. And then it says, "The men talked to in the
18 cigarette companies tend to," and then it goes
19 through subparagraphs (a), (b) and (c), do you see
20 that?

21 A. Yes.

22 Q. One of the things they tended to was to smear
23 the personal responsibility, motives, judgments or
24 techniques of Wynder and others supporting him. Do
25 you see that?

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6708

1 MR. WEBER: Your Honor, I'd object to any
2 questions about the characterizations by Hill &
3 Knowlton about what other people did. I think that's
4 inappropriate under 403.

5 THE COURT: No, I think it's appropriate.
6 These people are working for the tobacco company and
7 they're talking about the tobacco executives. It's
8 relevant, and I will allow that inquiry.

9 Q. Do you see that, sir?

10 A. Paragraph (a)?

11 Q. Yes.

12 A. Okay. What's --

13 Yeah, I see the --

14 Q. Okay.

15 A. -- the sentence.

16 Q. "The men talked to in the tobacco" -- or "in the
17 cigarette companies tend to:

18 "Think occasionally in terms of trying to
19 'smear' the personal responsibility, motives,
20 judgments, or techniques of Wynder and others...."
21 Do you see that?

22 A. That's what this says.

23 Q. Okay. And Wynder was one of the scientists who
24 published materials regarding the relationship of
25 smoking to lung cancer; correct?

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6709

- 1 A. Yes.
2 Q. You remember his name; don't you?
3 A. Well I've heard his name over the years, yes.
4 Q. Now another thing that the men talked to in the
5 cigarette companies tend to do is set forth in
6 paragraph (c). Do you see that?
7 A. Yes.
8 Q. "To overlook the fact that in this particular
9 instance, the stakes for the public are even larger
10 than for the tobacco manufacturers. (For the public,
11 an issue touching the deepest of human fears and
12 instincts is involved - the issues of uncontrollable
13 disease and death. Hence cigarette companies might
14 not readily be forgiven, if their approach to this
15 problem is stemmed only from eagerness to protect
16 their earnings, and if they twisted the research of
17 medical science (which seeks to save men) into a
18 device to save stockholders. There is no precedent
19 where a great industry has been forced to face such
20 grave issues."
21 "In the past, industry has given little twists
22 to the facts of science, to convert them into sales
23 propoganda, without much risk. The cigarette
24 industry has indeed been doing this for years."
25 Now did you know that, sir?

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- 1 A. Did I know that somebody wrote this in this
2 document 40 some years ago? No.
3 Q. No. Did you know that an agent of the tobacco
4 industry who met with the executives and research
5 directors wrote that in the past, industry had given
6 little twists to the facts of science to convert them
7 into sales propoganda without much risk? Did you
8 know that?
9 A. I did not know that anybody ever wrote this or
10 said that, or this person existed or anything.
11 Q. Nobody ever told you about this.
12 A. No.
13 Q. Nobody ever told you that it was these documents
14 which led to the Frank Statement put out by your
15 company and the other manufacturers who are sitting
16 around these tables represented by these lawyers.
17 Nobody ever told you that.
18 A. No.
19 Q. "We can therefore" -- if you go back to the page
20 where I was. "We can therefore readily" --
21 A. Wait, wait, wait a minute. Where -- I'm lost.
22 Q. Same paragraph.
23 A. Oh. Okay. Got you.
24 Q. "We can therefore readily understand its
25 assumptions that the same technique will work now, in

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- 1 devising propoganda. But it is highly important to
2 note that the deep issues of life-and-death that are

3 involved make highly doubtful the question as to
4 whether the familiar techniques can be relied on.
5 The stakes are too large; the penalties for losing
6 could be too great."
7 Do you see that?
8 A. Yes, I see that.
9 Q. Did anybody ever advise you of that?
10 A. No.
11 Q. If the tobacco industry has twisted the facts
12 over the years, the penalties should be great;
13 shouldn't they?
14 A. I'm not a lawyer or a judge, I don't know how to
15 answer a legal question that you seem to be putting
16 to me.
17 Q. I'm not asking you a legal question, I'm just
18 asking you as one human being to another. If this
19 industry twisted the facts over the years regarding
20 science, the penalties should be great; shouldn't
21 they?
22 MR. WEBER: Your Honor, I'd object to the
23 commentary, to the argumentative nature, and to the
24 fact that it does deal with legal issues for the
25 jury.

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6712

1 THE COURT: No, it's a proper question,
2 except for the first half of the statement.
3 MR. CIRESI: I'll withdraw that part of it.
4 THE COURT: The question itself is okay.
5 BY MR. CIRESI:
6 Q. Sir, if the tobacco industry twisted the facts
7 over the years, the penalties should be great;
8 correct?
9 A. I don't --
10 That's a legal judgment I believe you're asking
11 me to make. I'm incapable of making that. I
12 don't -- I mean I don't know how to answer that
13 question.
14 Q. Just no way of knowing; right?
15 A. I'm not a lawyer. I'm not a judge.
16 Q. So you think --
17 A. If there are legal penalties to be rendered,
18 they'll be rendered by the jury.
19 Q. So that's for the jury --
20 A. They will sit and judge what they see and they
21 will render their decision. That's the way the
22 system works.
23 Q. And you have no idea whether the penalties
24 should be great if the facts were twisted by the
25 industry that you worked for for over 40 years.

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6713

1 MR. WEBER: Objection, Your Honor, asked
2 and answered. It's the last question.
3 THE COURT: It's been asked and answered.
4 Q. Now sir, if you look back on page five of that
5 document, --
6 A. Yes.
7 Q. -- you see that at the top there's a reference

8 to a smoker starting with "He might just as well go
9 on enjoying his smoke...." Do you see that?
10 A. Yes.
11 Q. "He might just as well go on enjoying his smoke
12 in this interim while research pursues the facts,
13 with full assurance that if any cancer-causing agent
14 is ever found -- really found in tobacco, the
15 manufacturers will quickly find a way to eliminate
16 it." Do you see that?
17 A. Yes.
18 Q. And if you go on over to the bottom of page
19 seven, at the bottom of that page, --
20 A. Yes.
21 Q. -- last paragraph, "You can count on the
22 cigarette companies (who have obligated themselves to
23 pour millions of dollars into cancer research) to
24 take anything out of your cigarette that is a health
25 hazard" --

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6714

1 Does that mean if it's a risk?
2 A. I guess we're talking about risk, yes.
3 Q. Okay.
4 -- "if our science ever really finds any such
5 hazard in the wonderful tobacco leaf. Meanwhile know
6 this: despite the most elaborate attempts, no
7 efforts to give mice a lung illness by making them
8 live days on end in tobacco smoke has ever produced a
9 cause -- case of such illness through that kind of
10 exposure." Do you see that?
11 A. Yes.
12 Q. Okay. That's animal testing; correct?
13 A. Yes.
14 Q. Biological testing; correct?
15 A. Yes.
16 Q. And did RJR do biological testing?
17 A. In the '50s?
18 Q. In the '60s, in the '50s --
19 Let's start in the '50s.
20 A. I don't know.
21 Q. Did they do it in the '60s?
22 A. I'm not sure. I think so, but I'm not sure.
23 Q. Did they have a Mouse House that they closed
24 down?
25 A. I've heard that.

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6715

1 Q. Did you read the documents about it?
2 A. No.
3 Q. Do you know if it was closed down because the
4 CEOs of RJR and Philip Morris talked and that it was
5 in violation of the gentlemen's agreement not to do
6 that type of research?
7 A. No, I don't know that.
8 Q. You don't know.
9 A. Never heard of a gentlemen's agreement.
10 Q. Did RJR in the '50s and '60s know about
11 cancer-causing compounds in the wonderful tobacco
12 leaf?

13 A. I believe in the '50s and '60s, obviously
14 Reynolds, I would imagine the other companies, the
15 public health community, science, was in the rather
16 aggressive identification process of compounds in
17 cigarettes, so I'm sure in the '50s and the '60s they
18 knew there were compounds in cigarettes that had been
19 identified that had the potential to be
20 cancer-causing or potential to have health risk.

21 Q. So RJR knew; correct, sir?

22 A. I would think. There was a lot of work, in my
23 understanding, going on back in those days, not just
24 at Reynolds but throughout the scientific community,
25 to attempt to identify various compounds in

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1 cigarettes.

2 Q. Did you not understand the question I asked you?

3 A. Apparently I didn't, because you're going to ask
4 it again.

5 Q. Well, you let me know if you don't understand
6 the question that I ask you. Is that agreeable?

7 A. Yeah.

8 Q. Okay. Did Reynolds know that there were
9 cancer-causing compounds in cigarettes in the 1950s
10 and '60s?

11 A. I believe --

12 MR. WEBER: Object, Your Honor, that was
13 asked and answered. It was a proper answer.

14 THE COURT: It was not answered.

15 A. I believe, based on what I've heard, that
16 Reynolds was doing research related to identifying
17 compounds in cigarettes that could potentially be
18 cancer-causing.

19 Q. Okay. They were hazards found in the wonderful
20 tobacco leaf; correct?

21 A. Hazards?

22 Q. Yes.

23 A. They were compounds, as I understand all this,
24 that had the potential. Whether or not they were
25 literally hazards in that sense I don't know, but

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6717

1 they were identifying compounds --

2 Q. Well you just said no --

3 A. -- and publishing on it.

4 Q. Excuse me, sir. Didn't you just say earlier
5 that if it was cancer-causing, it would be a hazard?

6 A. I don't remember what you're referring to.

7 Q. Can you direct your attention to Exhibit 12581.

8 A. That's a different book; right?

9 Q. It is.

10 Can you tell me, sir, while you're looking for
11 that document, when Reynolds warned the consuming
12 public that it knew there were cancer-causing
13 compounds in its cigarettes?

14 THE COURT: Counsel, I don't think it's
15 fair to the witness to have him looking through to
16 find a document and then ask a question at the same
17 time.

18 MR. CIRESI: I'm sorry.
19 THE COURT: Why don't you wait until he
20 finds the document, then address the question,
21 please.
22 A. I have --
23 Q. Do you have the document?
24 A. Yes, I have the document, yes.
25 Q. Do you know when RJR warned the public that it
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6718
1 knew there were cancer-causing compounds in its
2 cigarettes?
3 A. I don't know that R. J. Reynolds ever, as you
4 put it, warned the public that there were
5 cancer-causing compounds in cigarettes.
6 Q. Never, right up to today; correct?
7 A. I don't recall the company ever taking out an ad
8 or -- if that's what you're referring to.
9 Q. People would write in and ask for information to
10 Reynolds; wouldn't they?
11 A. I suppose so, yes.
12 Q. People write in and complain about ads that
13 Reynolds was running; correct?
14 A. Are you talking about today?
15 Q. Yeah. In the '80s, in the '70s.
16 A. Yeah, people --
17 You get people that write all sorts of things.
18 Q. Okay. And people who wrote in and asked about
19 the health hazards and what Reynolds knew about the
20 health hazards of smoking, did Reynolds tell them
21 what was in their files?
22 A. No, not that I know of.
23 Q. And those were members of the public; correct,
24 that would write in?
25 A. Yes.
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1 Q. The members who you made -- and by "you" I mean
2 RJR -- representations to in the Frank Statement;
3 correct?
4 A. Could be, yes. I mean people --
5 That was in the public, people that write in are
6 from the public.
7 Q. And one of the representations, quoted
8 correctly, "We believe the products we make are not
9 injurious to health." Correct?
10 A. Yes, that's what that says.
11 Q. Now if you direct your attention, sir, to
12 Exhibit 12581.
13 A. Yes.
14 Q. This is a "SURVEY OF CANCER RESEARCH with
15 emphasis on POSSIBLE CARCINOGENS FROM TOBACCO" by
16 Claude E. Teague, Jr., 2nd of February, 1953. Do you
17 see that?
18 A. Yes.
19 Q. It's the same Mr. Teague we saw yesterday -- or
20 Dr. Teague we saw yesterday; correct?
21 A. Sure is, I think.
22 Q. Have you seen this document before?

23 A. Yes, I believe I have.
24 Q. Okay. When's the first time you saw it?
25 A. I can't remember. I started seeing documents,
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1 as I've said before, you know, starting about a year
2 and a half ago as I started to become involved in
3 various cases in litigation.
4 Q. Can you direct your attention to page 14.
5 A. Yes.
6 Q. And you see --
7 A. Or I'm sorry -- I'm sorry.
8 Q. And I'm talking about the 14, not the Bates
9 number, but the other number, sir.
10 A. Yeah.
11 Q. Do you have it?
12 A. Yeah. "Tobacco Additives" and --
13 Q. Correct. And do you see the "CONCLUSIONS"
14 section there?
15 A. Yes.
16 Q. And Dr. Teague concludes there that "The
17 increased incidence of cancer of the lung in man
18 which has occurred during the last half century is
19 probably due to new or increased contact with
20 carcinogenic stimuli." Correct?
21 A. That's what it says.
22 Q. He goes on to state, "The closely parallel
23 increase in cigarette smoking has led to the
24 suspicion that tobacco smoking is an important
25 etiologic factor in the induction of primary cancer

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1 of the lung." Do you see that?
2 A. Yes.
3 Q. And do you know what the term "etiologic" means?
4 A. No. You want to tell me?
5 Q. Do you know if it means cause?
6 A. Cause.
7 Q. And he goes on to state, "Studies of clinical
8 data tend to confirm the relationship between heavy
9 and prolonged tobacco smoking and incidence of cancer
10 of the lung;" correct?
11 A. That's what it says.
12 Q. Now this was almost a year before the Frank
13 Statement; correct?
14 A. Yeah.
15 Q. And in the Frank Statement, RJR said that its
16 product was not injurious to the health of its users;
17 correct?
18 A. Yeah. I believe what they said is they didn't
19 believe that it was.
20 Q. And of course cancer is injurious to people's
21 health; isn't it?
22 A. Sure is.
23 Q. Kills people; correct?
24 A. It can.
25 Q. And Dr. Teague goes on to say, under

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1 "RECOMMENDATIONS"
2 "It is recommended that this preliminary, broad
3 survey of cancer research be supplemented by
4 complete, detailed surveys of the individual topics
5 discussed above." Correct?
6 A. Yes. Uh-huh.
7 Q. "Such surveys should be made at frequent and
8 regular intervals in the future so as to make current
9 developments properly available to interested
10 persons." Correct?
11 A. Yes.
12 Q. And an interested person would be a user of the
13 product; correct?
14 A. I don't know who -- an interested person could
15 be somebody who smokes or it could be something else
16 he's referring to. Could be he's referring to people
17 in the company. I don't know who he's referring to
18 as "interested persons."
19 Q. Certainly could be your customers; correct? And
20 by "your," I mean RJR's customers.
21 A. Yeah, could be. But it seems to me what he was
22 doing here was doing a survey of available medical
23 literature on this subject and summarizing it. It's
24 not clear to me why the company would publish public
25 medical literature on research into cancer to

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1 smokers.
2 Q. Do you remember --
3 A. It's already publicly available.
4 Q. Have you ever done a survey of your smokers and
5 say, "How many of you read the medical literature?"
6 A. No.
7 Q. Would it be fair to state, sir, that you would
8 find very, very, very few consumers would be reading
9 the medical literature?
10 A. I think that's true.
11 Q. And would it also be fair to state that the
12 company has a duty to tell the public about what it
13 knows about its product?
14 MR. WEBER: Let me object on asked and
15 answered. We went through that yesterday, Your
16 Honor.
17 THE COURT: It has been asked and answered.
18 Q. Let me ask it another way. Having in mind your
19 testimony that the company has such a duty, do you
20 know if RJR ever put out at regular intervals any
21 type of surveys of the medical literature so that its
22 consumers would know in one place what RJR knew?
23 MR. WEBER: Let me object to the beginning
24 of that question because it attempts to summarize a
25 bunch of testimony from yesterday. I mean the

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1 remainder is all right, Your Honor.
2 THE COURT: No, I think the question is
3 okay. You may answer that.

4 MR. CIRESI: You may answer.
5 THE WITNESS: Could you please repeat --
6 MR. CIRESI: Can we have the question back,
7 please?

8 (Record read by the court reporter.)
9 A. No, I don't -- I don't believe the company has.
10 Q. And if you go on to the next page, sir, Dr.
11 Teague is stating that it's recommended that all
12 tobacco additives, flavorants and humectants used by
13 the company be examined carefully with respect to
14 their possible roles as carcinogens or
15 carcinogen-producing agents; correct?

16 A. Yes.

17 Q. Do you know if RJR ever did that?

18 A. We have toxicologists internal to the company
19 that review on a continuing basis all of the
20 additives in -- in the product. That list has been
21 provided to Health and Human Services, all the
22 additives that are in the products, since the
23 mid-'80s. There was a blue ribbon panel of
24 toxicologists on an industry-wide basis that
25 evaluates additives. You know, I think we do -- I

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1 know we do a lot of work relative to additives. In
2 terms --

3 Q. In the 1980s you said?

4 A. Started --

5 Well I know for sure it started in the -- in the
6 early 1980s, that I'm sure of. I don't know what the
7 company did relative to that prior to that because I
8 have no experience relative to this issue prior to
9 that. But in the early '80s I know we did. That's
10 when I became a plant manager and became familiar
11 with the methodologies and so forth that we were
12 using in the company.

13 Q. Did RJR provide that information to the public?

14 A. Provide what information?

15 Q. Its knowledge of carcinogens in the additives
16 and flavorants and humectants.

17 A. I don't know of any carcinogens that we have in
18 flavors and additives and humectants and all that
19 sort of stuff, and if there is any, I don't think we
20 ever published that list to -- to the public. But we
21 published a list of additives in 1994.

22 Q. Nineteen --

23 A. Ninety-four.

24 Q. And what caused the publishing of those
25 additives in 1994?

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1 A. A decision by the industry to publish them.

2 Q. After the filing of this lawsuit; wasn't it?

3 A. I don't know. When was it --

4 I'm not sure when this lawsuit was filed. I
5 don't think it had anything to do with this lawsuit.

6 Q. Okay. Now you say you formed a blue ribbon
7 panel; is that right?

8 A. It is my understanding that there is an outside

9 panel of toxicologists that evaluate additives that
10 are used in cigarette products.
11 Q. The entire industry got together with a blue
12 ribbon panel of their own toxicologists; correct?
13 A. No.
14 Q. Isn't that what you said?
15 A. Our own toxicologists? No. My -- my
16 understanding is that there -- there is or has been a
17 panel of outside toxicologists that evaluate, as a
18 check on our own internal toxicologists, the
19 additives that are used in the products.
20 Q. Oh, all right. So you got outside experts and
21 had a blue ribbon committee to look at additives; is
22 that right?
23 A. To evaluate or oversee what we're doing relative
24 to additives in addition to our own scientists.
25 Q. Do you know how many Surgeon General reports
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1 there have been since 1964?
2 A. '64 and '88, I guess a couple more. I'm not
3 sure how many.
4 Q. Do you know if there's been in excess of a
5 dozen?
6 A. I have no idea.
7 Q. No idea.
8 Regardless of how many there are, the industry
9 never convened a blue ribbon panel after any of those
10 Surgeon General's reports to determine what that blue
11 ribbon panel would say on whether smoking caused
12 disease; did it?
13 A. No.
14 Q. Right up to today it's never done that; has it,
15 sir?
16 A. That's right.
17 THE COURT: Counsel, I think we'll take a
18 short recess.
19 THE CLERK: Court stands in recess.
20 (Recess taken.)
21 THE CLERK: All rise. Court is again in
22 session.
23 (Jury enters the courtroom.)
24 THE CLERK: Please be seated.
25 THE COURT: Counsel.

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1 MR. CIRESI: Thank you, Your Honor.
2 BY MR. CIRESI:
3 Q. Mr. Schindler, this blue ribbon committee that
4 looked at additives, you said it was in the '80s?
5 A. Yes. I think they started somewhere in the
6 mid-'80s.
7 Q. They don't look at the additives in the paper;
8 do they?
9 A. I'm not sure.
10 Q. They don't look at the additives in the filter;
11 do they?
12 A. I'm not sure. They may. I'm just not sure if
13 they do or not. I know about tobacco -- I'm not --

14 I'm just not sure whether or not they look at
15 paper or filters. They may.
16 Q. They don't test under pyrolysis conditions; do
17 they?
18 A. I don't believe so.
19 Q. They have no idea what happens to those
20 additives and what type of hydrocarbons are formed
21 when they're subjected to the temperatures that
22 tobacco is when it's smoked; correct?
23 A. I really don't know what the scientific regimen
24 is that is used by these folks. I know they're
25 toxicologists, professionals in the field.

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1 Q. But they do not test the additives under the
2 conditions that they're subjected to in smoking a
3 cigarette; do they, sir?
4 A. I do not know the answer to that question.
5 Q. Now in 1959 you are aware, are you not, that RJR
6 was aware of many carcinogens in its smoke that had a
7 distinct possibility would have a carcinogenic effect
8 on the human respiratory system.
9 A. I believe the company was aware there were a lot
10 of compounds -- lot of people were -- that were
11 potentially carcinogenic, that were in the
12 cigarettes.
13 Q. That would have -- that would have a distinct
14 possibility that they would have a carcinogenic
15 effect on the human respiratory system; correct?
16 A. I don't know about your specific use of the word
17 "distinct possibility." I am aware or have been made
18 aware that the company was aware that there were
19 compounds in cigarettes that were being identified
20 that were potentially cancer-causing, were
21 carcinogens.
22 Q. Well if they did have a distinct possibility of
23 having a carcinogenic effect on the respiratory
24 system of a human being, that would be a health
25 hazard; wouldn't it?

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1 A. I'm not sure how to evaluate the term "distinct
2 possibility." That says they may or they may not. I
3 don't know what "distinct possibility" means.
4 Q. Can you direct your attention to Exhibit 12418.
5 This is a memorandum --
6 A. Is that -- excuse me. Is that 12 --
7 Q. 418. I'm sorry.
8 A. All right.
9 Q. Do you have it, sir?
10 A. Yes, sir.
11 Q. If you look to the back -- last page, you'll see
12 that's a memorandum from Dr. Alan Rodgman --
13 A. Yes.
14 Q. -- to Mr. Kenneth H. Hoover. Do you see that?
15 A. Yes.
16 Q. Dated November 2nd, 1959.
17 A. Yes.
18 Q. "THE OPTIMUM COMPOSITION OF TOBACCO AND ITS

19 SMOKE;" correct?
20 A. Yes.
21 Q. And in this -- strike that.
22 Did you know if Dr. Hoover or Mr. Hoover was a
23 research director at RJR?
24 A. I --
25 No, I didn't know Dr. Hoover. I know Alan
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1 Rodgman.
2 Q. And he was in the research and development
3 department; correct?
4 A. Yes, Dr. Rodgman was in research.
5 Q. And we've seen some of Dr. Rodgman's memos
6 yesterday relating to nicotine; correct?
7 A. Yeah, sure did.
8 Q. Now in 1959 Dr. Rodgman reported to Mr. Hoover
9 concerning the presence of carcinogenic compounds in
10 RJR's tobacco smoke; correct?
11 A. I --
12 Yeah, I guess that's what's in here.
13 Q. And you see in the first paragraph that there's
14 a reference to the fact that in 1954 the first report
15 of the presence of benzopyrene in tobacco smoke was
16 published?
17 A. Yes.
18 Q. And that was a carcinogenic or cancer-producing
19 polycyclic hydrocarbon; correct?
20 A. That's what this says.
21 Q. Do you know what a polycyclic hydrocarbon is?
22 A. Nope. I mean I've heard the term, but I'm -- as
23 I pointed out yesterday, I'm not a scientist.
24 Q. Do you know if they're highly carcinogenic?
25 A. I -- you know, I --
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1 No. I mean I -- well I've -- I guess it depends
2 on dosage level and exposure.
3 Q. Have you heard that they're highly carcinogenic?
4 A. I think I heard that they could be.
5 Q. Okay. And if someone was subjected to them over
6 20, 30 years on a daily basis, is that what you're
7 talking about as dose and exposure?
8 A. I'm not a toxicologist.
9 Q. Well you --
10 A. I -- I --
11 You're asking me if -- what happens if somebody
12 is exposed to a polycyclic hydrocarbon over 20, 30
13 years in the form that it comes out of cigarettes,
14 what happens to them. I don't know.
15 Q. That's not what I asked you.
16 A. Okay.
17 Q. You used the term "dose and exposure." I simply
18 asked a very simple question. Did you mean by that,
19 "dose and exposure," someone who is exposed to them
20 over 20 or 30, 40 years on a daily basis?
21 A. No.
22 Q. You didn't.
23 A. I didn't mean that.

24 Q. Okay. What did you mean by the term "dose and
25 exposure?"

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1 A. Well the toxicologists use that term, that the
2 risk in something has to do with the amount you get
3 or the dose.

4 Q. Okay.

5 A. Risk is in the dose. That's sort of a
6 fundamental principle, I guess, that toxicology
7 starts with. At least I've been told that by
8 toxicologists.

9 Q. So if someone is subjected to a dose daily
10 during the day of a carcinogen, that's a dose
11 element; correct?

12 A. Yes.

13 Q. And if somebody is exposed to that over 10 or 15
14 or 20 years, that's an exposure to it; correct?

15 A. Yes.

16 Q. And those are two terms you've heard from
17 toxicologists; correct?

18 A. Yes.

19 Q. And the more they're exposed to doses, the more
20 likely they may contract cancer; correct?

21 A. Could be.

22 Q. Now directing your attention to Exhibit 12418,
23 do you see where Dr. Rodgman then reports that since
24 1954, approximately 60 similar compounds --

25 A. No, I --

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1 Where are we?

2 Q. First paragraph. I'm sorry, sir.

3 A. Just a minute.

4 Q. Do you have it?

5 A. "In 1954 the first report" -- is that where --
6 Where are we? You're at the very first
7 paragraph under "HISTORICAL?"

8 Q. I am indeed.

9 A. Okay.

10 Q. Right where we were. Do you see it?

11 A. Like I said, you are more familiar with these
12 things than I am. It takes me a little time to catch
13 up.

14 Q. Do you think I should be more familiar with the
15 history of your company with regard to the hazards
16 and health than --

17 A. You are more --

18 Q. Excuse me, sir.

19 -- than the CEO of the company?

20 A. You are more familiar with these documents than
21 I am. I'm just trying to stay with you here.

22 Q. How many years have you been with this company?

23 A. Twenty-four years in May.

24 Q. So you think that I should be more familiar with
25 your own company's documents which bear upon safety

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1 and health than someone who's been with this company
2 and who is the CEO and has been there for 24 years?
3 A. Mr. Ciresi, I am talking --
4 MR. WEBER: Let me -- let me object.
5 First, it's getting argumentative, and he also asked
6 it once, Your Honor.
7 THE COURT: Okay. It is argumentative.
8 MR. CIRESI: I'll withdraw the question.
9 BY MR. CIRESI:
10 Q. Direct your attention, sir, to the first
11 paragraph. See the last sentence?
12 A. "Since then...?"
13 Q. Correct. Do you see it?
14 A. Yeah.
15 Q. "since then, approximately 60 similar compounds
16 have been isolated from the smoke of cigarettes."
17 Correct?
18 A. Right. That's what it says.
19 Q. Similar to benzopyrene; correct?
20 A. Similar -- similar to benzopyrene. "Since then,
21 approximately 60" --
22 Yeah, okay.
23 Q. Is that a fair statement?
24 A. Yeah.
25 Q. Okay. In the next paragraph it states that
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1 eight of those polycyclic hydrocarbons were isolated
2 from the smoke, are known to produce cancer in mice.
3 Correct?
4 A. Yes, that's what it says.
5 Q. "Another five or six are suspect as
6 cancer-producing agents in laboratory animals."
7 Correct?
8 A. That's what it says.
9 Q. And you go down to the next paragraph. "There
10 is no evidence that any of these compounds will
11 produce cancer in man. Nonetheless, there is a
12 distinct possibility that these substances would have
13 a carcinogenic effect on the human respiratory
14 system. Medical experience has shown that man
15 responds to various chemical substances in the same
16 manner as experimental animals. It is there -- It
17 follows therefore that it would be better for the
18 consumer if cigarette smoke were devoid of such
19 compounds." Do you see that?
20 A. Yes.
21 Q. Do you agree with that statement?
22 A. I think what Dr. -- yeah, I would --
23 Dr. Rodgman is saying that if you have compounds
24 in cigarettes that have potential for risk to a
25 smoker, and if you could get them out, it would be a
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1 good idea.
2 Q. Do --
3 A. And I would agree with that.
4 Q. And in Exhibit 18905, which was the Hill &

5 Knowlton document, it was stated that the industry
6 would remove such compounds; correct?
7 A. Yeah, I seem to remember there were references
8 in that PR document.
9 Q. And RJR never removed such compounds; did they?
10 A. I believe back there they tried various times
11 and were unsuccessful, and that's how the whole
12 effort on reducing risk in cigarettes with public
13 health people and the industry finally turned to
14 general reduction of compounds, because no one was
15 successful at selective elimination. So basic
16 principle that anybody could land on back in the '60s
17 was general reduction of tar and other compounds
18 across the board as opposed to trying to target or
19 selectively remove something, because --that was
20 tried, my understanding, in --
21 The company back in the '50s and early '60s
22 tried that and they were unable to be successful.
23 Q. Is your answer no?
24 A. Yes.
25 Q. Thank you.

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1 Did you ever tell the public --
2 MR. WEBER: Your Honor, I'm going to object
3 to the sarcasm and snide comments and the smiling
4 when the witness is answering. I think it's
5 inappropriate.
6 THE COURT: "Thank you" is not what I would
7 consider a snide comment.
8 Q. Once again, sir, if you don't understand a
9 question that I ask you, please tell me.
10 The last question was: Did RJR ever remove such
11 compounds. "Yes" or "no."
12 A. No.
13 Q. Did you ever tell the public that you found
14 those comments -- compounds and were not removing
15 them?
16 A. No.
17 Q. If we go, then, to the next paragraph. "As
18 described in RDR, 1956, No. 9" --
19 Do you know what that is?
20 A. An RDR?
21 Q. Yes.
22 A. No.
23 Q. Isn't that nomenclature for research and
24 development memoranda of the RJR Tobacco Company?
25 A. I just told you, I don't know what RDR -- RDR

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1 refers to.
2 Q. Okay. "As described in RDR, 1956, No. 9, we in
3 the R. J. Reynolds Tobacco Company Research
4 Department corroborated the published findings with
5 respect to 3,4-benzpyrene, obtained this compound in
6 crystalline form, and positively identified it as a
7 constituent of cigarette smoke on the basis of its
8 chemical and physical properties. Some thirty-odd
9 polycyclic hydrocarbons have since been similarly

10 characterized in these laboratories. Of these, eight
11 are carcinogenic in mouse epidermis. Cholanthrane, a
12 potent carcinogen, is one of three not yet reported
13 by other investigators." Do you see that?
14 A. Yes.
15 Q. That means it wasn't known to anybody else;
16 correct?
17 A. You know, that's what it says in this memo.
18 Q. Did RJR ever publish that information at that
19 time?
20 A. I don't know.
21 Q. If you go on to page three of this memo. Again,
22 sir, this is back in 1959; correct?
23 A. Yes, sir.
24 Q. This is the "DISCUSSION" section under Roman
25 numeral III?

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1 A. Yes.
2 Q. And I'd like to direct your attention about
3 halfway through that where it says, "Cigarette smoke
4 should contain...." Do you see that sentence?
5 A. Yes, I've got it.
6 Q. "Cigarette smoke should contain as little as
7 possible (preferably at the zero level*) of the
8 polycyclic hydrocarbons, should possess satisfactory
9 flavor to please the consumer, and should contain
10 sufficient nicotine to supply the necessary
11 requirements of the smoker with respect to this
12 compound." Do you see that?
13 A. Yes, I do.
14 Q. And that's the physiological effects that's
15 being referred to there of nicotine; correct?
16 A. I don't know what Dr. Rodgman is referring to in
17 this 1959 memo.
18 Q. Then you wouldn't know if he's referring to the
19 pharmacological --
20 A. I don't know what he's referring to here.
21 Q. Do you see the asterisk after "zero level?"
22 A. Yes.
23 Q. And if you go down to the bottom, you see that
24 it states, "We consider the zero level to be
25 impossible to achieve as long as the combustion

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1 temperature of the cigarette is greater than 700
2 degrees Centigrade?"
3 A. Yes.
4 Q. And that's the level at which tobacco burns in a
5 cigarette; isn't it, sir?
6 A. I'll take your word for it. I don't personally
7 know the temperature that tobacco -- a cigarette
8 burns at.
9 Q. You've never asked that of your scientists?
10 A. No.
11 Q. Have you asked your scientists what happens
12 under pyrolysis to the additives and compounds in the
13 cigarette when they're heated at that level?
14 A. No, I haven't.

15 Q. Have you asked whether or not additional
16 polycyclic hydrocarbons are formed?
17 A. No, I haven't.
18 Q. Did RJR in 1959 say to the public that it's
19 impossible to achieve zero carcinogens in its
20 cigarettes?
21 A. No, not that I know of.
22 Q. It never has done that; has it, sir?
23 A. Not that I know of.
24 Q. And if you go back up to the second full
25 paragraph under Roman numeral III, and specifically
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1 the last sentence, do you see there where Dr. Rodgman
2 is suggesting a threshold level of nicotine delivery?
3 A. No. You're talking about "...should yield
4 nicotine in the smoke in an amount ranging from 1.5
5 to 2.0?"
6 Q. Yes.
7 A. I --
8 He's talking about a range of nicotine. I don't
9 understand where that's any threshold.
10 Q. Do you have any idea why RJR would want a range
11 of nicotine?
12 A. I have no idea what Dr. Rodgman was referring to
13 in this memo.
14 Q. Do you know, if it gets above a certain range,
15 it may have a toxic effect?
16 A. I imagine you could get above a certain range of
17 a lot of things and get a toxic effect, so I would
18 think that nicotine or something would have -- could
19 be toxic in that sense.
20 Q. If it got below a certain range, would it not
21 have a pharmacological effect?
22 A. Would it not? I don't know. I -- this is --
23 I don't see where this is about threshold or
24 pharmacological effect or toxicity or anything.
25 Q. If it got below a certain range, would it have
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1 no pharmacological effect?
2 A. I have no idea.
3 Q. So since you have no idea, you don't know if the
4 cigarettes were designed to have a threshold level of
5 nicotine; do you?
6 A. I've never heard anybody talk about threshold
7 levels --
8 Q. And you --
9 A. -- other than these couple documents. But in my
10 experience in the company, running a plant, running
11 manufacturing, interacting with R&D people, I never
12 heard anybody talking about we've got to get to some
13 threshold level. In 24 years I haven't heard that.
14 Q. Can you direct your attention, sir, to Exhibit
15 18187.
16 A. Yes.
17 MR. CIRESI: Your Honor, would it be
18 appropriate to take a short break?
19 THE COURT: Would you like to?

20 Why don't we take a short break. And don't go
21 too far.

22 THE CLERK: Court stands in recess.
23 (Recess taken.)

24 THE CLERK: All rise. Court is again in
25 session.

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1 (Jury enters the courtroom.)

2 THE CLERK: Please be seated.

3 THE COURT: Counsel.

4 MR. CIRESI: Thank you, Your Honor.

5 BY MR. CIRESI:

6 Q. Mr. Schindler, can you direct your attention to
7 Exhibit 18187.

8 A. Yes, sir, I'm there.

9 Q. That would be in volume two. Do you have it?

10 A. Yes, I'm there.

11 Q. Now do you see that this is a document entitled
12 "THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND
13 OBJECTIVE APPRAISAL?"

14 A. Yes.

15 Q. And it's by Dr. Rodgman in 1962?

16 A. Yes, it is.

17 Q. Have you read this document before?

18 A. I've seen the document. I have not read the
19 whole document, no.

20 Q. Now if you direct your attention to the bottom
21 of the first page, the second-to-the-last paragraph.

22 A. "Although" -- it starts with "Although," is that
23 where you are?

24 Q. Yeah. Are you there?

25 A. Yes.

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1 Q. "Although the major part of the sales of this
2 Company consists of cigarettes, what the Company
3 sells is cigarette smoke." Do you see that, sir?

4 A. Yes.

5 Q. Do you agree with that?

6 A. It's sort of --

7 I don't know if I agree or disagree. We sell
8 cigarettes and people smoke cigarettes. It's kind of
9 a -- I --

10 I view that we sell cigarettes. I've never
11 viewed the business that we, in my mind, sell
12 cigarette smoke. I've always viewed we sell
13 cigarettes that people smoke.

14 Q. And what's in the smoke is nicotine and tar;
15 correct?

16 A. There's tar and there's nicotine and a bunch of
17 other things.

18 Q. And the "bunch of other things" are polycyclical
19 hydrocarbons and other types of hydrocarbons that are
20 grouped under the name tar; correct?

21 A. Yes.

22 Q. And in the next paragraph it says, "During the
23 past two decades, cigarette smoke has been the target
24 of a host of studies relating to ill-health and

25 particularly to lung cancer." Do you see that?
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1 A. Yes.
2 Q. "The majority of these studies incriminate
3 cigarette smoke from a health viewpoint." Correct?
4 A. Yes, that's what it says.
5 Q. And did Philip Morris advise the smoking public
6 of that in 1962?
7 A. I'm R. J Reynolds.
8 Q. Excuse me. R. J. Reynolds.
9 A. No, not of this.
10 Q. Do you know if Philip Morris did?
11 A. I wasn't working for Reynolds in '62. I don't
12 know about Philip Morris. I have no idea that Philip
13 Morris did anything.
14 Q. Do you know if The Tobacco Institute did, --
15 A. I have --
16 Q. -- which was supported by all of the cigarette
17 manufacturers?
18 A. I have no knowledge that the industry in 1962
19 wrote a report that says science reports that
20 cigarettes may cause cancer.
21 Q. You know of no such --
22 A. I don't know of any ad like that.
23 Q. In 1962 did Philip Morris -- or excuse me -- did
24 RJR state that the amount of evidence accumulated to
25 indict cigarette smoking as a health hazard is

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1 overwhelming and the evidence challenging such an
2 indictment is scant?
3 A. No, I don't believe that R. J. Reynolds said
4 that.
5 Q. Did R. J. Reynolds say that in 1988?
6 A. Not that I recall.
7 Q. Did it say it in 1998?
8 A. No, not that I know of. No.
9 Q. Can you direct your attention to page seven of
10 this memo, "The Evidence to Date."
11 "Obviously the amount of evidence accumulated
12 to indict cigarette smoke as a health hazard is
13 overwhelming. The evidence challenging such an
14 indictment is scant." Do you see that?
15 A. Yes, I do.
16 Q. Have you ever seen that before?
17 A. Yes, I think I've seen that before.
18 Q. When did you first see it, sir?
19 A. Oh, I -- I can't give you a precise date. It
20 was somewhere, as I've said before, in the last year
21 and a half. This process of getting involved in
22 litigation has unfolded, and through that whole
23 process I've seen various documents along the way.
24 Q. Did you tell Mr. Goldstone before he testified
25 in Congress about a month ago that back in 1962 RJR

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1 knew that the amount of evidence accumulated to
2 indict cigarette smoke as a health hazard was
3 overwhelming?
4 A. I don't recall --
5 No, I didn't tell Steve about this document in
6 1962.
7 Q. Do you know if anybody told Mr. Goldstone that?
8 A. I have no idea.
9 Q. Can you direct your attention, please, to page
10 13 of the memo.
11 A. Yes.
12 Q. And if you move down to where there's a
13 paragraph sign, "Members of this Research
14 Department...." Do you see that?
15 A. Yes, I do.
16 Q. Okay. "Members of this Research Department have
17 studied in detail cigarette smoke composition," and
18 then there's some references. Do you see that?
19 A. Yes.
20 Q. And those references are to the back of the
21 document; correct, sir, where there's a bibliography?
22 A. Yes.
23 Q. "Some of these findings have been published....
24 However, much data remains unpublished because they
25 are concerned with carcinogenic and cocarcinogenic

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1 compounds." Correct?
2 A. That's what it says.
3 Q. And it then cites to certain documents in the
4 bibliography; correct?
5 A. Yes.
6 Q. So that RJR in its research department had
7 studied in detail smoke composition and found
8 carcinogenic or cocarcinogenic compounds and they
9 didn't publish it because of that; correct?
10 A. I have no knowledge that they didn't publish it.
11 It says here some -- some things had remained
12 unpublished. I don't know if a week later they
13 published. I have no idea. I --
14 I know the Surgeon General, I believe in '64,
15 I've heard had paid compliments to Reynolds for
16 helping in terms of discovering the compounds, or
17 some of them in cigarettes, when they published the
18 '64 Surgeon General's report. So I don't know if
19 they changed their point of view on this afterwards
20 or not.
21 Q. Did RJR --
22 A. But the Surgeon General seemed to appreciate it.
23 Q. Did RJR in 1964 turn over all of the documents
24 that have been disclosed in this case to the Surgeon
25 General, sir?

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1 A. No.
2 Q. And what Dr. Rodgman is reporting is that these
3 findings weren't made public because they were
4 concerned about carcinogenic and cocarcinogenic
5 compounds; correct? That's what he reports.

6 A. That's what he says.
7 Q. And this was, what, eight years after the Frank
8 Statement; correct?
9 A. Yes.
10 Q. Where your company represented that it believed
11 the products we make are not injurious to health;
12 correct?
13 A. That's right.
14 Q. And where they represented to the public that
15 they accepted an interest in people's health as a
16 basic responsibility, paramount to every other
17 consideration in our business.
18 A. That's right.
19 Q. And where they stated we have -- always have and
20 always will cooperate closely with those whose task
21 it is to safeguard the public health; correct, sir?
22 A. That's what it says.
23 Q. They didn't meet any of those; did they?
24 A. I think they were cooperating with the public
25 health people, or the Surgeon General wouldn't have
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1 complimented the company for helping discover some of
2 these compounds that they used in the Surgeon
3 General's report.
4 Q. Didn't turn over all the documents; did they,
5 sir? You just said so.
6 A. No, they didn't turn over all the documents.
7 Q. So they decided what they would and wouldn't
8 turn over regarding what they knew about their
9 product; is that right?
10 A. I don't know what was going on here.
11 Q. Well let's see what Dr. Rodgman says, if we go
12 to the next paragraph -- or the next sentence. "This
13 raises an interesting question about the former
14 compounds." And there he's talking about the
15 carcinogenic or cocarcinogenic; correct?
16 A. I guess so.
17 Q. "If a tobacco company pled 'Not guilty' or 'Not
18 proven' to the charge that cigarette smoke (or one of
19 its constituents) is an etiological factor in the
20 causation of lung cancer or some other disease, can
21 the company justifiably assume the position that
22 publication of data pertaining to cigarette smoke
23 composition or physiologic properties should be
24 withheld because such data might affect adversely the
25 company's economic status when the company has

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1 already implied in its plea that such etiologic
2 effect exists -- that no such etiologic effect
3 exists?" Do you see that?
4 A. Uh-huh. Yes.
5 Q. And at this point in time RJR had pled not
6 guilty and not proven; hadn't they?
7 A. I don't know. I don't know what case --
8 Are you talking about court cases, or --
9 Q. I'm talking about whether smoking causes --
10 A. Oh, I'm sorry.

11 Q. -- lung cancer.
12 A. I thought -- I thought you were talking about
13 litigation. Yes, I think --
14 Yeah, the company's position was the causal
15 linkage wasn't proven, or whatever, back in this
16 timeframe, I guess. I wasn't here in '62.
17 Q. Still does today; doesn't it?
18 A. Still what?
19 Q. Says that it's not proven.
20 A. Well today the company's position, my position,
21 is that if you smoke, if people smoke, they have an
22 increased risk of certain diseases.
23 Q. Does smoking cause lung cancer?
24 A. It may.
25 Q. Does it cause lung cancer?

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1 A. I don't know for sure, but I believe it may. I
2 believe the risk is significant, and I believe we
3 have managed this company in a way to design products
4 or improve products to reduce the risk associated
5 with smoking, and I'm proud of it.
6 Q. Sir, does smoking cause lung cancer?
7 A. I don't know.
8 Q. Thank you.
9 Has RJR said smoking causes lung cancer?
10 A. No.
11 Q. So that they are still saying, some 35 years or
12 36 years after this memo, "not proven;" aren't they?
13 A. Well they're saying that the risk is there, and
14 yes, it is not proven in the discrete scientific
15 sense backed up by lab studies, backed up by the
16 causal mechanism in -- to go from the risk to the
17 cause in cigarettes, that's right.
18 Q. Is the answer to my question yes?
19 A. Yeah.
20 Q. Thank you.
21 And for 36 years, until this lawsuit,
22 information was withheld; correct?
23 A. No, that's not correct.
24 Q. Did the documents in this case -- were they
25 provided to any public health authority before they

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1 started coming out in this case, sir?
2 A. I don't know.
3 MR. WEBER: Let me object -- let me object
4 to that, first, Your Honor. The question implies
5 some obligation that hasn't been proven.
6 THE COURT: It certainly does. You may
7 answer.
8 MR. CIRESI: Can you answer the question?
9 THE WITNESS: Can you repeat the question?
10 MR. CIRESI: May I have the question back,
11 please.
12 (Record read by the court reporter.)
13 A. I don't know.
14 Q. Did you ask?
15 A. No.

16 Q. If they had come out back in 1962 or any point
17 up to the time they came out, do you think they may
18 have affected adversely the company's economic
19 status?
20 A. I have no idea.
21 Q. Well they've certainly affected the company's
22 economic status as of today; haven't they, sir?
23 A. I don't know if they have or not.
24 Q. And the reason you don't know if they have or
25 not is because your company, among others, is seeking
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1 immunity in Congress for past actions; correct?
2 MR. WEBER: Same objection as earlier on
3 that point, Your Honor.
4 THE COURT: Well you may answer that.
5 A. I believe what we're seeking in Congress is for
6 society to come to grips with cigarettes and how to
7 establish them in our society in a way that is
8 acceptable in terms of regulatory scheme, in terms of
9 how the market, and all aspects of its existence in
10 our society. That's what we're after. And --
11 Q. You --
12 A. -- part of that is that there be some limits on
13 liability relative to all this litigation.
14 Q. You're seeking immunity for past conduct; aren't
15 you?
16 MR. WEBER: Asked and answered, Your Honor.
17 THE COURT: It's not been answered.
18 A. I -- you know, I don't believe it's immunity in
19 that sense. "Immunity" to me implies that
20 there's -- you know, there aren't going to be any
21 lawsuits, there aren't going to be any suits in the
22 future. And there will be suits based on the way
23 this proposal is today.
24 Q. Oh, you mean total and absolute and complete
25 immunity is the only type of immunity you recognize;
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1 is that right?
2 A. Was that a question?
3 Q. Yes.
4 A. I'm giving you my answer to the way I understand
5 the agreement.
6 Q. You're seeking immunity in Congress. "Yes" or
7 "no," sir.
8 A. I believe --
9 MR. WEBER: Asked and --
10 Objection, asked and answered on the last one,
11 Your Honor.
12 THE COURT: It hasn't been answered.
13 A. I believe --
14 You're asking me my opinion. I believe what is
15 being asked for are limitations relative to
16 litigation.
17 Q. Okay. And a limitation --
18 A. Given the payments that will be made in the
19 context of this regulatory scheme and the total
20 package to establish the rules in our society as to

21 how cigarettes will continue to exist.
22 Q. A limitation on liability is an immunity to the
23 extent it's granted.
24 A. Well you're the lawyer. I'll take your word for
25 it.

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1 Q. So the answer is yes, sir?
2 A. Yes.
3 Q. Thank you.
4 A. I'm not a lawyer.
5 Q. And you say for the monies you're going to be
6 paying. You're not going to be paying. The smokers
7 are going to be paying; aren't they?
8 A. Any lawsuit we lose that would require us to
9 raise our prices, smokers would be paying.
10 Q. Yes.
11 A. The only --
12 Q. And --
13 A. -- place we get money is from selling our
14 product. That's the only place a business gets any
15 money is from selling their product. So if you lose
16 a lawsuit and it causes your prices to go up, smokers
17 will pay more because that's the only place we get
18 money from, is selling product.
19 Q. Well you could sell your food group and take
20 that money; couldn't you?
21 A. That's, I believe -- again not a lawyer -- but
22 that's bankruptcy. And --
23 Q. Bankruptcy. Just to sell part of the business
24 is bankruptcy?
25 A. I think you have shareholders, and if you sell

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1 off a part of the business or distribute it -- the
2 money to some -- to someone other than the
3 shareholders, I think that surely gets into the realm
4 of bankruptcy, as I understand it.
5 Q. Well RJR has been bought and sold a number of
6 times; hasn't it?
7 A. Yes.
8 Q. And parts of the business have been bought and
9 sold; correct?
10 A. And they have been transactions with
11 shareholders.
12 Q. And how many times have you gone into bankruptcy
13 when you bought and sold businesses?
14 A. You're talking about transaction with the
15 shareholders right now. I'm talking -- you --
16 But your first question is why don't you just
17 sell off your other assets and give that money to
18 people that win lawsuits.
19 Q. Sir --
20 A. I think that's different.
21 Q. Oh. An asset can be sold by the company; can it
22 not?
23 A. You have the shareholders to deal with.
24 Q. Right. But an asset --
25 A. They own the company.

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- 1 Q. And an asset --
2 A. I think they would care if you sold off their
3 asset and didn't give them any money.
4 Q. Sir, an asset can be sold by the company to
5 satisfy its debt. "Yes" or "no."
6 A. Yes.
7 Q. If a judgment is entered against the company, it
8 is a debt against the company. "Yes" or "no."
9 A. Yes.
10 Q. The food group was purchased with tobacco money.
11 "Yes" or "no."
12 A. It was purchased with the consolidated cash flow
13 of the corporation, which included, at that time,
14 tobacco, Sea/Land Services, containerized shipping,
15 Del Monte, a bunch of different subsidiaries.
16 Q. And they all started with tobacco; correct?
17 A. I believe you're right.
18 Q. And if the assets of the food group were sold to
19 some other company, the manufacturing facilities go
20 with it; don't they?
21 A. Yes.
22 Q. The employees go with it; don't they?
23 A. Yes.
24 Q. And that business is operated by the new entity;
25 correct?

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- 1 A. I would assume so.
2 Q. And those people keep working for that new
3 entity; correct?
4 A. Yeah.
5 Q. And what RJR would get would be money for that;
6 correct?
7 A. I believe so.
8 Q. And then that money could be used to pay its
9 debt; correct?
10 A. Still have some remaining shareholders to
11 contend with.
12 Q. They will indeed, sir. Shareholders who
13 benefited --
14 MR. WEBER: Let me object to the
15 commentary, Your Honor. We're getting very
16 argumentative here.
17 THE COURT: Well the "will indeed" is
18 commentary, counsel. That will be stricken.
19 MR. CIRESI: I withdraw it, Your Honor. I
20 apologize.
21 Q. The shareholders have benefited from this
22 company selling product, being cigarettes, to the
23 public; correct?
24 A. Yes.
25 Q. And they have benefited based upon the

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- 1 management's decisions over the last 40 years;

2 correct, sir?
3 A. Yes.
4 Q. Those decisions which bore upon the safety and
5 health of the American public; correct, sir?
6 A. Yes.
7 Q. And they had to discharge the duties that you
8 talked about and what we see in the Frank Statement
9 in accordance with the law; didn't they, sir?
10 A. I --
11 You have to repeat that last one.
12 Q. Management was required to discharge its duties
13 in accordance with the law; correct?
14 A. I believe, based on what I know and have
15 experienced, the management of this company has
16 abided by the law in discharging its duties.
17 Q. And under --
18 And under our system of justice, as you
19 understand it, if someone doesn't comply with their
20 duties under the law, they are held accountable;
21 correct?
22 MR. WEBER: I'm going to object again, Your
23 Honor, this is argumentative.
24 THE COURT: Well you may answer that.
25 Q. Isn't that correct, sir?
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1 A. If it is in a courtroom, between the lawyers and
2 the judge, the jury would decide who's accountable,
3 in violation of their duties. That's the legal
4 system.
5 Q. Yes. And if the company has not discharged its
6 duties under the law, then, as you understand it,
7 they are to be held accountable under the law;
8 correct?
9 MR. WEBER: Same objection, Your Honor. In
10 addition, I'd add asked and answered.
11 THE COURT: It's been asked and answered.
12 Q. Now from 1954 to 1998 your company has continued
13 to create doubt about smoking and health; hasn't it?
14 A. What are you referring to?
15 Q. Do you know if it has or not, sir?
16 A. I don't believe so. Everybody in our society
17 believes that cigarettes cause disease.
18 MR. CIRESI: Move to strike the last part
19 as non-responsive, Your Honor.
20 THE COURT: It is non-responsive, and I
21 will strike it if you request it.
22 MR. CIRESI: I do request it, Your Honor.
23 THE COURT: It will be stricken.
24 BY MR. CIRESI:
25 Q. Has your company attempted to create doubt about
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1 safety and health over the past 40 years?
2 A. I don't believe so.
3 Q. Can you direct your attention to Exhibit 7 --
4 I'm sorry, to Exhibit 13334. Excuse me.
5 A. Yes.
6 Q. Now this is a letter from RJR to Ms. Elaine

7 Olson, 654 East 103rd Street, Bloomington, Minnesota,
8 dated December 29th, 1988; correct?
9 A. Yes.
10 MR. CIRESI: Your Honor, we'd offer Exhibit
11 13334.
12 MR. WEBER: No objection, Your Honor.
13 THE COURT: Court will receive 13334.
14 BY MR. CIRESI:
15 Q. Have you seen this before, sir?
16 A. No, I haven't.
17 Q. "Dear Ms. Olson.
18 "Thank you for our letter concerning your Camel
19 75th Birthday ad campaign."
20 Now that's when the campaign kicked off in 1988;
21 correct?
22 A. Yes.
23 Q. "Opinions of our marketing efforts are always
24 welcomed, and we appreciate your taking the time to
25 express your thoughts." Do you see that?
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1 A. Yes, I do.
2 Q. And you know who Jo F. Spach is?
3 A. Yeah, I know Jo Spach.
4 Q. Manager of public information, public relations
5 department?
6 A. Yes.
7 Q. Did she have a duty to be honest to people who
8 write into the company?
9 A. Yes.
10 Q. To give them complete information?
11 A. Yes.
12 Q. To tell them what RJR knows about its product?
13 A. To tell them what RJR knows about its product?
14 I --
15 To be honest and forthright in answering
16 questions from the public, she should do that, yes.
17 Q. Yes.
18 And to tell them what RJR knows about the health
19 risks of their product; correct?
20 A. Yes.
21 Q. Just as RJR wanted to get honest reactions, at
22 least as it said in this letter, from the public;
23 correct?
24 A. Yes.
25 Q. "It is helpful to get honest reactions from the
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1 public in order that we may better evaluate our
2 efforts and be guided in the future." Correct?
3 A. Yes.
4 Q. "The tobacco industry is concerned about the
5 charges being made that smoking is responsible for so
6 many diseases. Long before the present criticism
7 began, the tobacco industry, in a sincere attempt to
8 determine what harmful impacts -- effects, if any,
9 smoking might have on human health, established The
10 Council for Tobacco Research." Correct?
11 A. Yes.

12 Q. Now that was the TIRC; correct?
13 A. I believe TIRC preceded CTR.
14 Q. You have no idea what type of research has been
15 done, specifically, with grants from the CTR; do you?
16 A. I'm not a scientist, but I know there are
17 eminent scientists that direct those grants and -- to
18 other scientists at major institutions of medical
19 research throughout the country, so I figure they
20 know more about it than I do, and they are of
21 esteemed knowledge and expertise.
22 Q. They're so esteemed and knowledgeable that
23 you've never asked them to come in and say what they
24 believe with regard to whether smoking causes
25 diseases; is that right?

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1 A. Yeah, that's right, uh-huh.
2 Q. Yeah. Were you afraid what they'd say?
3 A. No.
4 Q. You simply never asked them; is that right?
5 A. That's correct.
6 Q. Never suggested to anybody else in the industry
7 that you get them all together and ask them; have
8 you?
9 A. That's right.
10 Q. Never surveyed them to see what they thought;
11 right?
12 A. No.
13 Q. And we saw from the documents today that the
14 TIRC was set up to get out public relations
15 materials; didn't we?
16 Q. I saw a PR person memo -- or memo written by a
17 PR person of 45 years ago talking about that. I
18 don't believe that CTR was set up for PR purposes,
19 based on my interaction with it over the last couple
20 of years.
21 Q. Have you looked at the documents that have been
22 introduced into this case with regard to TIRC to see
23 whether it performed public relations functions?
24 A. The documents that I saw were the ones we went
25 through today.

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1 Q. Those are the only ones you've looked at;
2 correct?
3 A. That deal with public relations --
4 Q. Yes.
5 A. -- and TIRC? I believe so.
6 Q. "The industry has also supported research grants
7 directed by the American Medical Association. Over
8 the years the tobacco industry has given nearly 130
9 million to independent research on the controversies
10 surrounding smoking -- more than all the voluntary
11 health associations combined." Do you see that?
12 A. Yes.
13 Q. Is that referring to the CTR?
14 A. I don't know if that's just CTR or CTR and other
15 places, but I would think CTR is in that, yes.
16 Q. And again, you don't know what type of studies

17 were conducted with money received by the CTR;
18 correct, sir?
19 A. No. I know they were done by brilliant and
20 competent and knowledgeable scientists.
21 Q. Do you know that a lot of them were just getting
22 their feet wet?
23 A. Just getting their feet wet?
24 Q. Yes.
25 A. Who? You mean --

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1 Q. The brilliant, knowledgeable scientists who were
2 the grantees of the CTR.
3 A. I am not qualified to challenge grant decisions
4 by eminent scientists who have distributed money to
5 other scientists to do research.
6 Q. That's -- that's not what I asked.
7 A. You said to me did I know they were just getting
8 their feet wet.
9 Q. Did I --
10 I asked you if you knew if the grantees, many of
11 them, were just getting their feet wet.
12 A. No, I didn't know that.
13 Q. Have you ever asked the question about the
14 nature of the grants themselves in the 24 years
15 you've been with your company?
16 A. No. I've only been involved with CTR for two
17 years.
18 Q. Do you know if the lawyers controlled CTR for a
19 substantial period of time?
20 A. I don't know that the lawyers controlled CTR.
21 Q. Do you know if there are internal company
22 documents which showed that the lawyers controlled
23 CTR?
24 A. I don't know --
25 I don't have any knowledge that lawyers

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1 controlled CTR.
2 Q. Do you know Mr. Ramm?
3 A. Ramm?
4 Q. Ramm.
5 A. No.
6 Q. Did you know who he was?
7 A. I know the name, that he was a previous general
8 counsel, as I understand. But I never knew him.
9 It's before my time.
10 Q. Do you know if he controlled CTR?
11 A. I have no idea. I don't know Mr. Ramm. Never
12 knew him.
13 Q. Can you just save that place there and go to
14 Exhibit 10165, which is in the other volume.
15 A. Yes, I'm there.
16 Q. Do you have it?
17 A. Uh-huh.
18 Q. Have you ever seen that document before?
19 A. I don't think so. (Clearing throat) Excuse me.
20 Q. I'll represent to you that these are the
21 handwritten notes of Mr. Judge, who was the president

22 of Lorillard from 1970 to 1984, and the CTR -- on the
23 CTR board of directors from 1974 to '84. Have you
24 ever heard of Mr. Judge?
25 A. I've heard his name, yes.

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1 Q. And this is called the "Scientific Research
2 Liaison Committee." Do you see that?
3 A. Yes.
4 Q. Dated 4/21/78. Do you see that that?
5 A. Sure do.
6 Q. And he reports at number one, "We have again
7 abdicated the scientific research directional
8 management of the industry to the lawyers with
9 virtually no involvement on the part of scientific or
10 business management side of the business." Do you
11 see that?
12 A. Yes, that's what it says.
13 Q. Were you ever told that?
14 A. Told that I should abdicate my business
15 responsibility to the lawyers?
16 Q. Told that the industry abdicated its
17 responsibilities --
18 A. No.
19 Q. -- on scientific research to the lawyers.
20 A. No, I've never been told that.
21 Q. Look at number two. "Lorillard's management is
22 opposed to the total industry future being in the
23 hands of the Committee of Counsel...." Have you
24 heard of the Committee of Counsel?
25 A. Yes.

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1 Q. And the Committee of Counsel are counsel from
2 each one of the manufacturing defendants; correct?
3 A. Yes.
4 Q. And they get together and decide what research
5 will or will not be done; correct, sir?
6 A. I've never known that to happen.
7 Q. You haven't.
8 A. No.
9 Q. Mr. Judge says, "it's reminiscent of the late
10 1960's when Ramm's group" --
11 That's your former general counsel; correct?
12 A. R. J. Reynolds' former general counsel, not
13 mine.
14 Q. -- "when Ramm's group ran the TI" --
15 That's Tobacco Institute; correct?
16 A. Yes.
17 Q. -- "CTR" --
18 That's Council for Tobacco Research; correct?
19 A. Yes.
20 Q. -- "and everything else involved with the
21 industry's public posture." Correct?
22 A. Yes.
23 Q. And were you ever told that, sir?
24 A. No.
25 Q. Can you go back to the letter to Ms. Olson.

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- 1 "Despite all the research going on, the simple
2 and unfortunate fact is that scientists do not know
3 the cause or causes of the chronic diseases reported
4 to be associated with smoking." Do you see that?
5 A. Yes.
6 Q. Did you tell her that the -- strike that.
7 Did RJR tell Ms. Olson that the Surgeon General
8 found nicotine to be addictive in that year?
9 A. No.
10 Q. Did they tell her that they found nicotine to
11 have the same pharmacological effect as cocaine and
12 heroin?
13 A. No.
14 Q. Did they tell her that RJR knew about
15 carcinogenic compounds back in 1962?
16 A. No.
17 Q. Did they tell her back in 1962 that the evidence
18 was overwhelming to indict cigarette smoking?
19 A. No, Jo Spach didn't have that in her memo.
20 Q. Did Jo Spach say that the evidence supporting
21 cigarette smoke way back in 1962 was scant?
22 A. No, Jo didn't say that.
23 Q. Did she say that the scientific research of the
24 industry was being run by the lawyers?
25 A. No, she sure didn't.

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- 1 Q. Did she say that the TI was set up to create
2 doubt and controversy?
3 A. No, she didn't say that.
4 Q. She didn't give Ms. Olson all the facts about
5 the industry, to be honest, so that Ms. Olson could
6 better evaluate whether or not your company was
7 telling the truth; did she?
8 A. She did not --
9 No, she didn't write that memo to your
10 satisfaction.
11 Q. She didn't give any adverse information about
12 the industry so that Ms. Olson, who took the time to
13 write to your company, could better evaluate your
14 efforts; did she, sir?
15 A. No.
16 Q. And these are form letters that have been sent
17 out over decades by your company; aren't they?
18 A. Yes.
19 Q. To anyone who writes in; correct, sir?
20 A. Yeah. Possibly.
21 Q. People who want to know the truth, and they get
22 the form letters; don't they, sir?
23 MR. WEBER: Your Honor, I want to object to
24 the raising of the voice and pounding on the table.
25 It's not appropriate.

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- 1 THE COURT: Please don't pound on the
2 table, counsel.

3 Q. People who write in and want to get the truth,
4 they get the form letters; don't they, sir?
5 A. They get a response from the company.
6 Q. People who you say know everything about
7 cigarette smoking who write to your company get the
8 form letters; don't they, sir?
9 A. They get a company response. I don't know what
10 question the woman was asking that this letter goes
11 back to -- or responds to.
12 Q. You can't tell, based on the context of this
13 response, what Mrs. Olson was asking about, sir?
14 A. I really -- I really don't know what --
15 I don't know what her letter was. It's not
16 here.
17 Q. You can't tell from the context of this letter
18 what the substance of her questions were?
19 MR. WEBER: Objection, asked and --
20 A. Something about --
21 MR. WEBER: Objection, asked and answered,
22 Your Honor.
23 THE COURT: It's been asked and answered.
24 Q. And you went to the Wharton School of Business?
25 A. Yup. Proud of it.

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1 Q. Your company goes so far in creating doubt that
2 you take out ads; don't you?
3 A. What are you talking about?
4 Q. Take a look at Exhibit 12667.
5 A. Yes, I'm there.
6 Q. Do you have it, sir?
7 A. Uh-huh.
8 Q. This is an ad that was placed in 1984. Do you
9 see that in the upper right-hand corner, "R. J.
10 Reynolds Company?"
11 A. Yes, I do.
12 MR. CIRESI: We'd offer Exhibit 12667, Your
13 Honor.
14 MR. WEBER: No objection, Your Honor.
15 THE COURT: Court will receive 12667.
16 BY MR. CIRESI:
17 Q. Now sir, I want you to assume, because we've
18 been so advised by Reynolds, that this ad ran in
19 Better Homes and Garden, Newsweek, The New York
20 Times, People Magazine, Red Book, Time, TV Guide, USA
21 Today, U.S. News & World Report, the Wall Street
22 Journal and the Washington Post. Blanket the
23 country; correct?
24 A. It's a lot of magazines. I don't --
25 You know, they would be distributed all over the

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1 country.
2 Q. Now can you tell me, in looking at this
3 advertisement by the R. J. Reynolds Company in 1984,
4 where it states that Reynolds knew in 1962 that the
5 evidence indicting cigarette smoke was overwhelming?
6 A. I don't believe that's in here.
7 Q. Tell me where it says that Reynolds knew in 1959

8 that there were multiple carcinogenic compounds in
9 its tobacco.
10 A. Doesn't say that.
11 Q. Tell me where in there it says that nicotine is
12 addictive.

13 MR. WEBER: Let me object, Your Honor.
14 It's just a series of argumentative questions.

15 THE COURT: You may answer the question.

16 A. It doesn't say that in there that I can see.

17 Q. Where in there does it say we will provide you
18 all that we know about our product in the documents
19 in our files?

20 A. Doesn't say that in there.

21 Q. Where does it say in there that we will remove
22 carcinogenic compounds that we said we would back in
23 1954?

24 A. Doesn't say that.

25 Q. Where does it say in there we have not provided
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1 all of our documents to the public health
2 authorities?

3 A. Doesn't say that.

4 Q. Where does it say in there that smoking causes
5 any disease?

6 A. Doesn't say that.

7 Q. And do you know how many of these ads were run
8 in 1984, in 1985, and subsequent years?

9 A. No, I don't.

10 MR. WEBER: Object -- Your Honor, I will
11 object to the pounding again.

12 THE COURT: Be careful not to get carried
13 away, counsel.

14 Q. You don't know; do you, sir?

15 A. No.

16 Q. You were with the company.

17 A. I was managing one of our manufacturing
18 facilities. I don't know how many ads -- how many
19 times these ads were run.

20 Q. You were managing a manufacturing facility that
21 was producing the cigarettes that were the benefit of
22 this ad campaign; correct?

23 A. I'm --

24 I don't understand the question.

25 Q. You don't.

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1 A. No, I don't.

2 Q. Do you think these ad campaigns were for the
3 benefit of RJR Tobacco?

4 A. What do you mean by "benefit?" I don't
5 understand your question.

6 Q. You don't understand what the --

7 A. No.

8 Q. -- word "benefit" means?

9 A. I don't understand your question.

10 Q. Did it help create doubt in people's minds?

11 A. I don't believe so. Everybody in our society
12 believes that cigarettes have significant health

13 risks. Smokers have been quitting. Industry volume
14 has been declining since 1983, by 20 some percent
15 since then. I do not see one shred of evidence that
16 this ad run in Good Housekeeping suddenly convinced
17 the American public that, you know, from the good old
18 tobacco company, you don't have to worry about
19 smoking any more. I just don't believe that. At
20 all.

21 Q. How much did it cost you to distribute this ad,
22 not just in Good Housekeeping, but Better Homes and
23 Garden, Newsweek, --

24 A. I have --

25 Q. -- New York Times, People, Red Book, Time, TV
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1 Guide, USA Today, U.S. News & World Report,
2 Washington Post and Wall Street Journal? How much,
3 sir?

4 A. I have no idea.

5 Q. More than the 20 million bucks that you spent on
6 children in 11 years to prevent them from smoking?

7 MR. WEBER: Objection, Your Honor. This is
8 getting out of hand.

9 A. I have no idea.

10 THE COURT: Counsel, try not to slam that
11 on the table, please.

12 Q. Have you ever asked how much you've spent trying
13 to create doubt and controversy as contrasted to
14 trying to prevent children from smoking? Have you
15 ever asked?

16 A. No, I've never asked that question.

17 Q. You said you didn't know anything about the
18 Mouse House; is that right, sir?

19 A. I just know that there was one, and somewhere in
20 the late '60s or early '70s it was shut down. I do
21 not know the circumstances around it.

22 Q. Why don't you direct your attention to Exhibit
23 2545.

24 MR. WEBER: Can I have that -- the number
25 again, Your Honor?

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1 THE COURT: 2545.

2 MR. WEBER: Thank you.

3 A. 25 --

4 Q. 2545, volume one.

5 A. It must be in this book. Hang on. Two --

6 Oh, I'm sorry. I was used to looking for
7 five-digit numbers. Okay.

8 Q. Do you have it, sir?

9 A. Yeah.

10 Q. This is a document that's been introduced into
11 evidence, Philip Morris document, October 3rd, 1969,
12 Dr. Wakeham from Mr. Carpenter regarding R. J.
13 Reynolds' biological facilities. Do you see that?

14 A. Yes.

15 Q. Now does RJR have a practice of providing to its
16 competitors detailed layouts of its facilities?

17 A. Absolutely not.

18 Q. Do you see here that it's reported that Dr.
19 Nielson showed the RJR Reynolds biological facilities
20 to Dr. Arthur Burke of American Brands and to me on
21 Wednesday, October 1?

22 MR. WEBER: Your Honor, --

23 A. Yes, I see that.

24 MR. WEBER: -- I'd object -- I'd object to
25 questions on this under Rule 602 unless it's

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1 established he has personal knowledge.

2 THE COURT: You can answer if you know.

3 Q. Do you know, sir?

4 A. Would you repeat the question?

5 Q. Do you see that it's reported here that Dr.
6 Nielson showed the RJR biological facilities to Dr.
7 Burke of American Brands and Mr. Carpenter on
8 Wednesday, October 1, 1969?

9 A. Right.

10 Q. Do you see that?

11 A. Yes.

12 Q. All right. Does RJR have a practice of taking
13 its competitors into its buildings and showing them
14 its biological testing facilities?

15 A. Not that I know of.

16 Q. And if you look at the back of this document,
17 the attachments, you see the description of the
18 biological facilities that Philip Morris and American
19 Brands were shown by Dr. Nielson on October 1, 1969.

20 A. Yeah, I see this layout here.

21 Q. And do you see that, in the balance of the text
22 of the document, that Mr. Carpenter details the
23 biological facilities?

24 A. Yes, I see some of that here.

25 Q. And that's unusual in your experience; isn't it,

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1 sir?

2 A. Yeah.

3 Q. Can you direct your attention, then, to Exhibit
4 10465.

5 A. I'm there.

6 Q. Now many times in the industry, scientists will
7 get together from the various companies; correct?

8 A. Not many times. There are scientific
9 conferences.

10 Q. Okay. That's not unusual; correct?

11 A. No, I don't think it's unusual in any industry.

12 Q. All right. I'm showing you now a memorandum
13 that's two months after the previous exhibit. This
14 is December 15th, 1969. Again it's Mr. Carpenter.
15 Do you see him?

16 A. Yes.

17 Q. And it's from Mr. Weissbecker. Do you see that?

18 A. Yes.

19 Q. And there's carbon copies to a Dr. Osdene and a
20 Dr. Wakeham; correct?

21 A. Yes.

22 Q. And this references that Mr. Weissbecker met

23 with Dr. Price from RJR Reynolds at the CTR-USA
24 meeting; correct?
25 MR. WEBER: Object -- objection, Your
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1 Honor, the same 602 issue again.
2 THE COURT: Do you want to approach the
3 bench, counsel.
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1 (Side-bar discussion as follows:)
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(Side-bar conversation concluded.)

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1 THE COURT: You may answer the question.
2 THE WITNESS: Mr. Ciresi, could you please
3 repeat the question?
4 BY MR. CIRESI:
5 Q. You have the exhibit in front of you, 10465,
6 sir?
7 A. Yes.
8 Q. Okay. Now you see that there's a meeting here
9 that took place, the CTR-USA meeting of December 11th
10 and 12th, 1969.
11 A. Yes.
12 Q. And Mr. Weissbecker was advised by Dr. Price
13 from RJR that chronic cigarette smoke exposure
14 studies with rats was being done at RJR. Do you see
15 that?
16 A. Yes.
17 Q. And that there was also an expression of
18 interest in nicotine pharmacology; correct?
19 A. Yes.
20 Q. Now can you direct your attention to Exhibit --
21 Before we do that, sir, in Exhibit 10465, do you
22 see that there was work being done at Bowman Gray
23 Medical -- or School of Medicine? Do you see that?
24 A. "Recently they hired a wife of an instructor
25 from Bowman Gray School of Medicine...." Yes.

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1 Q. And Bowman Gray was a former CEO of RJR?
2 A. Yes, he was.
3 Q. And there was some research being done with lung

4 macrophages. Do you see that?
5 A. Yes.
6 Q. Do you know what macrophages are?
7 A. No.
8 Q. Do you know if they're part of the host defense
9 mechanism of the human body?
10 A. I just told you I didn't know what they are.
11 Q. You've never heard that term in speaking or
12 working with any of your scientists in the company?
13 A. I don't know. I don't remember it.
14 Q. And you see the reference here that Dr. Price
15 was interested in learning about gas chromatographic
16 profile of cigarette smoke within animal exposure
17 chambers?
18 A. Yes.
19 Q. Do you know what that is?
20 A. Some scientific testing methodology.
21 Q. Do you know what it's intended to show?
22 A. No.
23 Q. Can you direct your attention to Exhibit 12756.
24 Ah. Can we go back for a minute to 10465, just
25 one second. I apologize, Mr. Schindler.

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1 Do you see the meeting here with -- again with
2 Dr. Price?
3 A. Yes.
4 Q. Okay. And it's reported that the animals over
5 at RJR were receiving up to 500 cigarettes and
6 emphysema was produced; correct?
7 A. That's what it says.
8 Q. Now that's animal studies producing emphysema;
9 correct?
10 A. That's what this says. I don't know if this is
11 accurate or not. I don't know anything about this.
12 Q. Did RJR ever publicly state that they knew that
13 smoke caused emphysema?
14 A. I don't believe that RJR knows that smoke causes
15 emphysema.
16 Q. Did you tell Mrs. Olson when she wrote in that
17 we had determined way back in the '60s that smoke
18 caused emphysema?
19 A. I don't believe that this says that the company
20 had determined that. This is a memo to some -- I'm
21 not even -- I'm not even sure who these people are.
22 Q. Well let me put it this way: In the interest of
23 a full and open debate, did RJR ever disclose to the
24 public that it had conducted animal studies where
25 animals developed emphysema from cigarette smoke?

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1 A. I have no knowledge that the company had an
2 animal study where the animals developed emphysema.
3 Q. But that wasn't my question. My question to you
4 is: In the interest of a full and open debate, did
5 RJR ever disclose to the public that it had conducted
6 animal studies where animals developed emphysema from
7 cigarette smoke?
8 A. No, never disclosed that to the public.

9 Q. Did it ever disclose that to any public health
10 officials?
11 A. Not that I know of.
12 Q. Have you ever seen this document before?
13 A. No.
14 Q. Can you direct your attention to Exhibit 12756.
15 A. Yes.
16 Q. Now this is an RJR document, sir, and you see it
17 has "INTRODUCTORY REMARKS: BY DR. SENKUS?"
18 A. Yes.

19 MR. CIRESI: We'd offer Exhibit 12756, Your
20 Honor.

21 MR. WEBER: No objection, Your Honor.

22 THE COURT: Court will receive 12756.

23 BY MR. CIRESI:

24 Q. Now sir, this --

25 The date of this, we've been advised, is March
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1 19th, 1970. Can you assume that?

2 A. Yes.

3 Q. Do you know if the Mouse House was closed on
4 that day?

5 A. I have no idea.

6 Q. Do you know who Dr. Senkus is?

7 A. I knew Dr. Senkus, yeah.

8 Q. "We are here today to inform you about a
9 significant reorganization of the Research Department
10 and a reorientation of research programs. This
11 reorganization of the Research Department is
12 reponsive to changing times, events and situations,
13 and has been under study for months and, in parts,
14 years." Do you see that?

15 A. Yes.

16 Q. "As you will see, the primary result of this
17 reorganization is to put even greater emphasis on
18 research useful to our tobacco, food, packaging and
19 containerized operations, and to eliminate research
20 programs which are no longer appropriate to corporate
21 needs, objectives and strategies." Do you see that?

22 A. Yes.

23 Q. And you've heard about the Mouse House closing;
24 haven't you?

25 A. Yes.

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1 Q. Have you ever seen this document?

2 A. No, I haven't.

3 Q. "Mr. Vassallo's statements, which follow, are
4 designed to give you the essentials of what is to be
5 done." And then there's comments of Mr. Vassallo.
6 Do you see that?

7 A. Yeah. Well I see -- yeah.

8 Q. See it?

9 A. I see "Mr. Vassallo."

10 Q. And then he goes on, and do you see the
11 "CONFERENCE ROOM" on the next page?

12 A. Yes.

13 Q. "In-house biological testing in the smoking

14 health area such as work we have been doing for the
15 Scientific Advisory Board of the Council for Tobacco
16 Research has been terminated. Any further biological
17 testing that may be needed in further developing
18 smoking machines, et cetera will be referred to
19 qualified independent research organizations. As you
20 know, we have used such organizations on and off for
21 years."

22 Number two, "All synthesis of compounds in
23 fields outside of tobacco and foods has been
24 terminated. All biological work in these outside
25 areas is being terminated, i.e., pharmaceuticals and

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1 fine chemicals and others."

2 Three, "The Biological Division is being
3 dissolved. Some service functions will be -- be
4 retained, such as bacteriological - quality control
5 assistance. These functions will be transferred to
6 the Analytical Division.

7 "The mung bean and tobacco beetle work will
8 continue." Do you see that?

9 A. Yes.

10 Q. Now when the Mouse House biological testing
11 program was terminated, do you know if RJR continued
12 to look at whether or not beetles or mung beans were
13 being developed in their tobacco?

14 A. Well the mung bean reference is to the foods
15 company we own, and I think that related to Chung
16 King where they grew mung beans for Chung King
17 brands. So it had nothing to do with tobacco.

18 Q. So the tobacco beetle, that refers to tobacco;
19 correct?

20 A. Yes. Little bug that eats the leaf.

21 Q. And do you know that on this day, 26 people were
22 terminated without notice?

23 A. No.

24 Q. Can you turn to the next page.

25 Number nine, "Altogether, 26 staff people are
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1 being terminated." And then their names are stated;
2 correct?

3 A. Yes.

4 Q. There's a Mr. Colucci in there; correct?

5 A. Yes.

6 Q. Do you know Mr. Colucci?

7 A. No, I don't know him. Heard his name, but I
8 don't know him.

9 Q. In what context have you heard his name?

10 A. Really in the context --

11 Well, I believe, you know, that he worked in the
12 Mouse House. Then I think somewhere in the '80s he
13 might have been on a consulting contract with our
14 research and development group.

15 Q. And Mr. Joseph Bumgarner, do you know him?

16 A. No, I don't.

17 Q. Now these people were all employees of the Mouse
18 House; weren't they, sir?

19 A. I guess so. I mean that's what this is saying.
20 Q. And they were all doing biological testing;
21 weren't they?
22 A. I have no idea what they were doing.
23 Q. Can you turn to the "CONCLUDING REMARKS," which
24 is on Bates number page 749. Do you see that?
25 A. Yes.

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1 Q. And in the concluding remarks there is an
2 expression of appreciation for the fine professional
3 people who have performed so willingly and well;
4 correct?
5 A. Okay. Where are you here?
6 Q. I'm down at the bottom. I'm sorry, sir, the
7 paragraph --
8 A. "This was a tough decision" --
9 Q. Second-to-the-last paragraph.
10 A. "Each and every one of my colleagues" -- is
11 that --
12 Q. Yes.
13 A. Okay.
14 Q. Do you see that?
15 A. Yes.
16 Q. "Each and every one of my colleagues join in
17 telling you how sincerely we regret the loss of such
18 fine professional people who have performed willingly
19 and well. Be assured that your associates in the
20 Company will make full effort to help you relocate
21 into good jobs in a short time;" correct?
22 A. That's what it says.
23 Q. "This was a tough decision to make, but there
24 simply was no alternative and for this reason we hope
25 that the detail provided will help you to understand

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1 the reasons this move is necessary. We wish you 'all
2 the best' and hope that the special liberal
3 termination agreements -- arrangements we are making,
4 together with your and our best efforts, will
5 minimize hurtful effects to you and your families."
6 Correct?
7 A. Yes, that's what it says.
8 Q. Then it goes on to say, "To those of you in
9 non-professional assignments" --
10 Those were the non-professionals who were
11 working on biological testing; is that right?
12 A. It's everybody in there that was a
13 non-professional.
14 Q. So the professionals who were looking -- working
15 on biological testing were let go; correct, sir?
16 A. I -- it looks that way. I don't know what
17 happened here. I have no idea.
18 Q. "To those of you in non-professional assignments
19 who will stay but be relocated, I say 'please bear
20 with us.' We will do all we can to make your
21 reassignments as quickly and as fairly as possible,
22 keeping both your interests and the interests of our
23 Company in mind." Correct?

24 A. That's what it says.
25 Q. "I know this all -- this comes to you all rather
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1 suddenly. It had to be that way to give you the word
2 first. There will be plenty of time to discuss this
3 and to get answers to individual questions in the
4 days to come. Dr. Senkus, Dr. Teague, George Cook,
5 Alan Kirby, Department Managers and I are available
6 to answer questions of a specific nature." Correct?

7 A. Yes.

8 Q. Now what happened here, sir, was that the CEOs
9 of Philip Morris and RJR got together because Philip
10 Morris found out that RJR was conducting in-house
11 biological research, contrary to a gentlemen's
12 agreement in the industry; correct?

13 A. How do you know that? I have --

14 Q. Do you know that, sir?

15 A. No.

16 Q. You don't.

17 A. I never heard of such a thing.

18 Q. You haven't.

19 A. No, I haven't.

20 Q. Can you direct your attention to Exhibit 2549.

21 This is a document that's already in evidence
22 entitled "STRICTLY PRIVATE AND CONFIDENTIAL" produced
23 by B.A.T. Company Ltd. Do you see that, sir?

24 A. Uh-huh. Yes.

25 Q. And it's a meeting with Dr. Helmut Wakeham,

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1 vice-president and director of research, Philip
2 Morris Inc., 10th of September, 1970. Do you see
3 that?

4 A. Yes.

5 MR. WEBER: Your Honor, I would object on
6 that Rule 602 issue we've discussed earlier.

7 THE COURT: Overruled. You may answer.

8 Q. And this is after the last memo we saw where the
9 Mouse House was terminated; correct?

10 A. Yes.

11 Q. And can you turn to page two.

12 A. Yes.

13 Q. Do you recall you asked me how I knew?

14 A. Yeah.

15 Q. Do you recall you told me that I knew your
16 documents better than you did?

17 A. Yeah. You're good.

18 Q. Can you take a look at "Philip Morris Affairs."

19 A. Yes.

20 Q. "One result of the greater influence which
21 Wakeham has with Mr. J. Cullman has been the
22 agreement, albeit reluctant, to permit Philip Morris
23 to do, quote, in-house, end of quote, biological
24 work. When this was first mooted" --

25 Do you know what "mooted" means?

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1 A. Stopped I guess.
2 Q. Okay.
3 -- "Wakeham was told there was a tacit agreement
4 between the heads of the US Companies that this would
5 not be done. Wakeham had countered by saying that he
6 knew Reynolds, Lorillard and American were all
7 undertaking some and that Liggett and Myers had never
8 been party to the agreement. Cullman" --
9 And do you know who Cullman is?
10 A. I guess that's referring to Joe Cullman, who was
11 CEO of the company --
12 Q. Right.
13 A. -- back in those days.
14 Q. And still on the board of Philip Morris as a
15 chairman emeritus; correct?
16 A. I think so.
17 Q. You heard that during Mr. Bible's testimony;
18 didn't you?
19 A. No, I didn't.
20 Q. How did you know --
21 A. No.
22 Q. How did you know that?
23 A. I just heard it over -- just heard it. I just
24 know Joe -- Joe Cullman is still alive, and I kind of
25 just knew from somewhere that he was still on the

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1 board.
2 Q. Okay. And let's go on then.
3 "Cullman had been incredulous and had phoned
4 Galloway, the President of R. J. Reynolds who had
5 denied Reynolds was doing any bioassay. When Cullman
6 had told Wakeham this, Wakeham's response had been to
7 quote the Reynold's work on the Senkus smoking
8 machine and to claim that he had floor plans showing
9 outline area allocations." Do you see that?
10 A. Yes.
11 Q. Remember the floor plans we looked at just
12 previously --
13 A. Yes.
14 Q. -- in Exhibit 2544?
15 A. Yes.
16 Q. Okay. "This too had been relayed to Galloway by
17 Cullman" --
18 Galloway is the RJR CEO; right?
19 A. I believe that's right.
20 Q. -- "incredible though it may seem, and Galloway
21 had visited the Reynolds Research Department to find
22 it was substantially true." Correct?
23 A. That's what this says.
24 Q. "There had been a sudden reorganization at
25 Reynolds, resulting in the closure of the biological

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1 section, the severance of product development (which
2 remained with the tobacco division) from the research
3 department (which became a corporate activity) and
4 ultimately the resignation of Dr. Eldon Nielson, who

5 had been in charge of biology." Correct?
6 A. That's what this says.
7 Q. The gentlemen's agreement; correct, sir?
8 A. I've never heard of a gentlemen's agreement.
9 Q. You now see, though, it was an agreement,
10 though; don't you, sir?
11 A. I see speculative documents.
12 Q. You see speculative documents.
13 A. Well --
14 Q. And, sor --
15 A. -- somebody forgot to tell me about the
16 gentlemen's agreement. We've been doing biological
17 research for a long time.
18 Q. Just like Mr. Tucker forgot to tell you he went
19 to the board and told them about marketing to youth
20 in 1975; correct?
21 MR. WEBER: Objection.
22 A. That's right.
23 MR. WEBER: It's argumentative, Your Honor.
24 Q. That's correct; isn't it?
25 A. Yes, sir.

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1 Q. Yes. And --
2 MR. WEBER: If you permit -- I'm sorry.
3 THE COURT: Well --
4 MR. WEBER: I'm sorry, Your Honor.
5 THE COURT: Your witness isn't going to
6 give me have a chance to rule, so I'll let the answer
7 stand.
8 Q. And sir, there's been a united front put up by
9 the tobacco industry by supporting CTR and TI for
10 over 40 years; isn't that right?
11 A. Can you repeat the question, please?
12 Q. Sure.
13 There's been a united front put up by the
14 tobacco industry in supporting CTR and TI for over 40
15 years; correct?
16 A. The industry has been supporting CTR and TI for
17 40 years.
18 Q. And they've been commonly paid; correct? Is
19 that right?
20 A. I'm sorry, the word "commonly." Did you say
21 "commonly?"
22 Q. Paid by all of you --
23 A. Yes.
24 Q. -- in relationship to your shares; correct?
25 A. Yes.

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1 Q. And during that time, part of their charge has
2 been to create controversy and doubt about
3 controversy; isn't that right, sir?
4 A. I don't believe that.
5 Q. Did you ever see a document which indicated
6 that?
7 A. None that I recall.
8 Q. Can you go to 20987, volume two. Toward the
9 end.

10 A. I got it. I thought you said 29 -- 29 --
11 Q. 20987.
12 A. Yeah, I got it.
13 Q. Dated May 1, 1972?
14 A. Yes.
15 Q. And that's Horace Kornegay, and you know him as
16 the president of the Tobacco Institute; correct?
17 A. I don't know Horace Kornegay. I seem to
18 remember he was president of The Tobacco Institute in
19 the '70s.
20 Q. And from Fred Panzer, vice-president of The
21 Tobacco Institute?
22 A. I have no idea who Fred Panzer is.
23 Q. You see this says down at the bottom, it says
24 TI. See it down there, sir, next to the Bates
25 number?

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1 A. Uh-huh, uh-huh, yes.
2 Q. I'll represent to you this document is in
3 evidence and it's been identified by Mr. Merryman as
4 being a Tobacco Institute document. Do you
5 understand that?
6 A. Fine.
7 Q. Now I want to read a couple parts and ask you if
8 you knew this. Starting in the general comments,
9 second paragraph.
10 "For nearly twenty years, this industry has
11 employed a single strategy to defend itself on three
12 major fronts -- litigation, politics, and public
13 opinion." Do you see that?
14 A. Yes, I see that.
15 Q. "While this strategy was brilliantly conceived
16 and executed over the years, helping us to win
17 important battles, it is only fair to say that it is
18 not - nor was it intended to be - a vehicle for
19 victory. On the contrary, it has always been a
20 holding strategy, consisting of:"
21 And I want to direct your attention to that
22 first bullet point.
23 A. Yes.
24 Q. "creating doubt about the health charge without
25 actually denying it." Do you see that?

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1 A. Yes, I do.
2 Q. And when you wrote to Mrs. Olson, your company,
3 you didn't give her any of the information that you
4 had in your files; did you?
5 A. We didn't give her any of our files.
6 Q. And you said there was a controversy; didn't
7 you, sir?
8 A. I believe that was in there, yes.
9 Q. In 1988; correct, sir?
10 A. I believe that's right, yes.
11 Q. In a form letter; correct, sir?
12 A. In a letter from Jo Spach.
13 Q. In a form letter; correct, sir?
14 A. I don't know --

15 MR. WEBER: Object -- let me object, asked
16 and answered on that issue.
17 THE COURT: You may answer if it was a form
18 letter or not.
19 A. It was a letter from Jo Spach, is what you
20 showed me.
21 Q. And you testified earlier those were form
22 letters; didn't you, sir?
23 A. I don't know for sure if it's a form letter. It
24 may be.

25 MR. CIRESI: Thank you. I have no further
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1 questions.

2 THE COURT: Let's recess for lunch. We'll
3 reconvene at 2:15.

4 THE CLERK: Court stands in recess, to
5 reconvene at 2:15.

6 (Recess taken.)
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1 AFTERNOON SESSION.

2 THE CLERK: All rise. Court is again in
3 session.

4 (Jury enters the courtroom.)

5 THE CLERK: Please be seated.

6 THE COURT: Counsel.

7 MR. WEBER: Thank you, Your Honor.

8 Good afternoon, ladies and gentlemen.

9 (Collective "Good afternoon.")

10 DIRECT EXAMINATION

11 BY MR. WEBER:

12 Q. Good afternoon, Mr. Schindler.

13 A. Mr. Weber.

14 Q. Before going into your background and personally
15 on some of your history at R. J. Reynolds, I want to
16 start off addressing several points raised by Mr.
17 Ciresi earlier.

18 As chief executive officer at R. J. Reynolds,
19 are you ultimately responsible for Reynolds' policies

20 regarding sales and marketing?
21 A. Yes, I am.
22 Q. Now prior to becoming CEO, had you had some
23 involvement in Reynolds' sales or marketing functions
24 over your years at Reynolds?
25 A. Yes. I worked in the sales department back --
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1 from April of '76 through '78, and I really started
2 working before that, in around mid-'75, with the head
3 of marketing and head of sales in my personnel roll
4 back in those days.
5 Q. And have you had involvement with sales- and
6 marketing-related issues as a member of the Executive
7 Committee since 1988?
8 A. Yes, quite a bit.
9 Q. Now Mr. Ciresi showed you a handful of documents
10 discussing under-age smokers. You remember those?
11 A. Yes, I sure do.
12 Q. Had you ever seen those documents in the regular
13 course of business in your 20-plus years at Reynolds?
14 A. No, I hadn't.
15 Q. Are those documents that Mr. Ciresi showed you
16 consistent with the documents you have seen in the
17 ordinary course of business?
18 MR. CIRESI: Objection, leading,
19 suggestive.

20 THE COURT: Sustained.

21 BY MR. WEBER:

22 Q. Had you seen documents of that type in the
23 ordinary course of business at R. J. Reynolds?
24 A. No, I had not.
25 Q. Have you had discussions in the ordinary course
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1 of business at R. J. Reynolds, in meetings with
2 people from marketing or sales in which sales to
3 under-age smokers were considered or discussed?
4 MR. CIRESI: Objection, calls for hearsay.
5 THE COURT: No. Well you may answer that
6 "yes" or "no."
7 Q. Have you had such meetings where under-age
8 marketing or advertising to under-age smokers was
9 discussed?
10 A. I have never been in a meeting where anybody was
11 discussing --
12 MR. CIRESI: Excuse me.
13 A. -- under-age smokers.
14 MR. CIRESI: Your Honor, that called for
15 blatant hearsay. The witness was instructed to say
16 "yes" or "no."
17 MR. WEBER: Your Honor, may --
18 THE COURT: Do you have a difficult time
19 hearing me, sir?
20 THE WITNESS: No, judge.
21 THE COURT: Okay. Would you please answer
22 in accordance with the ruling of the court.
23 THE WITNESS: Yes, sir.
24 THE COURT: Thank you.

25 MR. WEBER: Your Honor, may I make a
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1 comment or be heard on that last issue?
2 THE COURT: You may not make a comment.
3 MR. WEBER: May I be heard?
4 THE COURT: With regard to what?
5 MR. WEBER: I don't think -- I'm not asking
6 for hearsay. I'm not going to offer it for the
7 truth. It's just --
8 THE COURT: I realize you're not asking,
9 but the defendants' -- the defendants' response
10 called for hearsay when I instructed the witness to
11 answer "yes" or "no."
12 MR. WEBER: All right.
13 THE COURT: That's my concern.
14 MR. WEBER: I understand, Your Honor.
15 THE COURT: Okay.
16 BY MR. WEBER:
17 Q. Let -- let me go back, then, just to make
18 sure --
19 A. Yes.
20 Q. -- I ask the question the right way, Mr.
21 Schindler.
22 Have you ever been in a meeting during your time
23 at R. J. Reynolds where a plan to market to under-age
24 people was discussed?
25 A. No.

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1 MR. CIRESI: Objection, Your Honor --
2 excuse me. Objection, calls for hearsay by
3 implication. It's also leading and suggestive.
4 THE COURT: No, I -- the question can be
5 answered "yes" or "no."
6 Q. Can -- can you answer that "yes" or "no"?
7 A. Yes. The question -- the answer to the question
8 is no.
9 Q. Now there were some documents involving Mr.
10 Tucker, Mr. Horrigan and Mr. Long. Did you know
11 those individuals?
12 A. Yes, I knew them very well.
13 Q. Did you have meetings with them?
14 A. Yes. I worked very closely with Charlie Tucker
15 starting in that mid-'75 period through, probably,
16 about '78. I worked with Jerry Long from '79 to '81
17 when I became a plant manager. I worked with Ed
18 Horrigan in the '79 through '81 period.
19 Q. Okay. Can you answer this question "yes" or
20 "no," Mr. Schindler: In any of your meetings with
21 Mr. Horrigan or Mr. Long or Mr. Tucker, did they talk
22 with you or suggest to you anything about marketing
23 to under-age smokers?
24 MR. CIRESI: Your Honor, objection, calls
25 for hearsay, and it's also leading and suggestive.

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1 THE COURT: Well it is leading, certainly,
2 but I'll allow it. You may answer it "yes" or "no."
3 A. No.
4 Q. Now do you recall Mr. Ciresi asked you some
5 questions about a document that may have been
6 presented to the board of directors in 1974?
7 A. Yes, I recall that.
8 Q. I think that's Plaintiffs' Exhibit 12493. Could
9 you turn to that.
10 A. Yes, I have it.
11 Q. Now on page one of that document, which is 1311
12 on the Bates number, --
13 A. Yes.
14 Q. -- can I direct your attention down to the
15 bottom paragraph on that first page.
16 A. Across from chart three?
17 Q. Yes.
18 A. Yes.
19 Q. Now does that say that -- following up where
20 there was a reference to 14 to 24, does it say "They
21 represent tomorrow's cigarette business?"
22 A. Yes, it says "They represent tomorrow's
23 cigarette business."
24 Q. Could you turn to page 1314, which is two beyond
25 there.

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1 A. Yes. I have -- I'm there.
2 Q. In the middle of the page is there reference to
3 under 35 age group?
4 A. "More young adult appeal - trial has increased
5 from 24 to 31 percent in the under 35 age group for
6 the King Size."
7 Q. And then across from chart 10, is there a
8 reference to young adults?
9 A. Yes, it says "Salem box profile is younger with
10 57 percent of users in the 18 to 34 age group versus
11 41 percent for Salem King."
12 Q. And could you turn to page 1315.
13 A. I'm there.
14 Q. Right above the bullet points above chart 12, --
15 A. Yes.
16 Q. -- is there a reference in the first bullet
17 point to young adult males?
18 A. It says, "The brand has increased its share
19 penetration among the key 18 to 24 male age group -
20 from 1.8 percent to 2.1 percent - a 16 percent
21 increase."
22 Q. Now I note you weren't at that meeting; were
23 you, sir?
24 A. No, I wasn't.
25 Q. Based on your review of the documents, is the

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1 phrase "young adult" used consistently to refer to
2 people as low as -- as young as 14?
3 A. It doesn't appear to be. There's 14 to 17 --
4 I'm sorry. Yeah, 14 to 24, 18 to 24, under age 35;
5 there seems to be different age groupings for

6 references to young adult in this document.
7 Q. Could you turn to Exhibit 12464. I think that's
8 in one of the plaintiffs' volumes as well.
9 A. Yes, I'm there.
10 Q. Do you remember that document that Mr. Ciresi
11 showed you --
12 A. Yes, I do.
13 Q. -- from Frank Colby?
14 A. Yes.
15 Q. Do you know what Frank Colby's duties were in
16 the 1970s at R. J. Reynolds?
17 A. No, I'm not sure. I know he worked in R&D.
18 Q. Now Dr. Colby in this document suggested a new
19 cigarette should be developed that had a 1950s tar
20 level; correct?
21 A. Yes.
22 MR. CIRESI: Objection, it's a misstatement
23 of the document.
24 THE COURT: Can you rephrase the question,
25 counsel.

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1 Q. Could you read the --
2 Can we fix that a little bit? No, down. There
3 we go. The -- I -- under "Memorandum," one, two,
4 three, the fourth paragraph --
5 A. "My suggestion...?"
6 Q. Right. Can you read that paragraph.
7 A. "My suggestion covers all these conditions. It
8 is basically to go back as much as possible -
9 probably at least halfway - towards the old filter
10 cigarettes," and I can't read what's next, it's
11 blocked out here, "the cigarettes of the 1950's prior
12 to the Surgeon General's Report. These cigarettes
13 had the following three main characteristics as
14 distinguished from today's cigarettes."
15 Q. Okay. Could you go to the next page, the top
16 paragraph, Mr. Schindler.
17 A. Yes, I'm there.
18 Q. Could you read that.
19 A. "To summarize, it should be easy to develop,
20 within a relatively few weeks, these new youth-appeal
21 for market testing for which the following
22 advertising claims could be unequivocally proven:
23 They will deliver more flavor, more enjoyment, and
24 more puffs for the money than any large selling
25 cigarette on the market, or for that matter, than any

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1 other cigarette now on the market."
2 Q. Did R. J. Reynolds ever make such a cigarette?
3 A. Not to my knowledge. I don't believe they ever
4 did.
5 Q. Did RJR ever advertise a cigarette as having
6 more puffs for the money as suggested in this
7 memorandum?
8 MR. CIRESI: Objection, no foundation.
9 Just said he didn't know.
10 THE COURT: Sustained.

11 Q. Based on your knowledge of 20-plus years at R.
12 J. Reynolds, Mr. Schindler, did R. J. Reynolds ever
13 advertise a cigarette that advertised more puffs for
14 the money?

15 MR. CIRESI: Objection, no foundation.

16 THE COURT: No, you may answer that, if you
17 know.

18 THE WITNESS: Okay.

19 A. I do not believe the company ever marketed a
20 product -- a brand on the basis of more puffs for the
21 money.

22 Q. Now in the late 1970s, did you become involved
23 in sales and marketing for the new brand launch for a
24 new cigarette?

25 A. I -- I worked in sales for about two years,

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1 April '76 to around July of '78, and I became
2 involved in the launch of a brand called Real
3 cigarettes.

4 Q. That's R-e-a-l?

5 A. R-e-a-l.

6 Q. Was that a major effort for R. J. Reynolds at
7 the time?

8 A. It was an extremely major effort. It was at
9 that time one of the biggest consumer product
10 launches ever. It was an extremely big product
11 launch or brand launch for the company.

12 Q. It was an important activity for the company?

13 A. Yes.

14 MR. CIRESI: Objection, Your Honor, it's --
15 it's leading and suggestive.

16 THE COURT: It is leading. Try to avoid
17 that, counsel.

18 Q. Was that an important activity for the company?

19 A. It was. It was very important. It was a very
20 big priority for the company -- or for the company at
21 that time.

22 Q. Was there any discussion in any of the meetings
23 in connection with Real -- and answer this "yes" or
24 "no" if you can -- was there any discussion
25 whatsoever in connection with this product launch

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1 about marketing to under-age smokers?

2 A. There was no discussion about marketing to
3 under-age smokers.

4 Q. Now do any of the documents shown to you
5 yesterday by Mr. Ciresi indicate that Reynolds
6 actually did create marketing campaigns for under-age
7 smokers?

8 A. Could you ask --

9 I thought he (referring to Mr. Ciresi) was going
10 to get up, so I just wanted -- could you --

11 Could you ask the question again?

12 Q. Right. It's easy to get distracted. Did any of
13 the documents -- strike that.

14 Do any of the documents shown to you yesterday
15 by Mr. Ciresi indicate that R. J. Reynolds actually

16 did create marketing campaigns for under-age smokers?
17 A. No, none of those documents -- documents
18 suggested that to me.
19 Q. What is done at R. J. Reynolds, in your
20 experience, when R. J. Reynolds creates a marketing
21 campaign? What types of activities are undertaken?
22 MR. CIRESI: Well, Your Honor -- Your
23 Honor, I'm going to object to it, there's no
24 foundation. Time. He said he had worked in
25 marketing for two years.

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1 THE COURT: Okay. Do you want to ask him
2 about the two years he was in marketing or --
3 MR. WEBER: Well, Your Honor, let me lay a
4 little foundation.
5 THE COURT: Do you want to go back to 1958
6 or --
7 MR. WEBER: Let in lay a little foundation.
8 THE COURT: Give us a little hint.

9 BY MR. WEBER:
10 Q. Based on the experience you've had in your times
11 when you consulted with or worked in the sales or
12 marketing departments or were involved in product
13 launches --

14 A. Yes.

15 Q. -- or were involved in meetings in which any
16 marketing issues were discussed, or since 1988 when
17 you've been on the Executive Committee or as CEO,
18 based on those experiences, what does R. J. Reynolds
19 do when it creates a marketing campaign?

20 MR. CIRESI: Objection. There's still no
21 foundation. It also goes beyond the period of
22 discovery, and we do not know what period of time is
23 being referred to that he would have the basis to
24 testify.

25 THE COURT: Okay. I assume it's 1988 to
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1 1994?

2 MR. WEBER: May I be heard --

3 THE COURT: Would that be a valid
4 assumption?

5 MR. WEBER: May I be heard, Your Honor, at
6 the side-bar?

7 THE COURT: Sure.
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1 (Side-bar discussion as follows:)

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(Side-bar conversation concluded.)

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6825

1 BY MR. WEBER:

2 Q. Mr. Schindler, you said that, I think, in about
3 the middle of 1975, you did some consulting with the
4 sales department?

5 A. Yes.

6 Q. Were you aware in that period of what the sales
7 and marketing departments did in creating marketing
8 campaigns?

9 A. Yes. I had a reasonably good knowledge at that
10 point, yes.

11 Q. And then you were in the sales department for
12 several years thereafter?

13 A. Yes, couple years.

14 Q. Seventy what --

15 A. April of '76 till around July of '78.

16 Q. And one --

17 Did that also involve the launch of the Real
18 brand?

19 A. Yes, it did.

20 Q. What --

21 Let's focus now on those periods, '75 to '78, in
22 there, and based on the knowledge you had at the
23 time. What types of activities or research did R. J.
24 Reynolds do in that time period in connection with
25 creating a marketing campaign?

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1 A. Well you would do research to develop a product
2 concept, research to get what is known as brand
3 positioning or the image that's conveyed in an
4 advertisement. Once you develop those ideas, you go
5 to focus groups, which is nothing more than you
6 gather eight or 10 people in a room with a trained

7 facilitator, and they will, for example, show them an
8 advertisement and get their reaction to it, or pack
9 design, show them the pack and get their reaction to
10 that.

11 You also do quantitative research on the same
12 things, which means you send a survey form out to 400
13 people, 500 people, and you tabulate those results.
14 You take product design and also do product testing
15 where people will smoke the product, unidentified,
16 and -- and rate the product to, you know, tell you
17 how much they like that product. It's typically
18 referred to as qualitative and quantitative research.

19 You're constantly taking your ideas to the
20 target consumer or smoker to see what their reaction
21 is to your idea. And that's the way the marketing
22 discipline worked at Reynolds and that's really the
23 way it works in every consumer products company.
24 You're constantly interacting with your consumer so
25 that you can get feedback from them on whether or

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1 not -- whether or not they like your idea, product,
2 the packaging, the promotional idea, advertisements
3 and that type of thing, and that's the kind of
4 research that goes in to developing a brand and a new
5 product idea before it goes to market.

6 Q. Are you aware of any documents that exist that
7 show that type of research showing ads, showing
8 packs, et cetera, showing posters, to under-age
9 people?

10 MR. CIRESI: Objection, Your Honor, no
11 foundation. He testified this morning he doesn't
12 know anything about -- anything about the documents
13 going back that far.

14 MR. WEBER: I object to that. That is not
15 a fair characterization, Your Honor.

16 THE COURT: Well you'll have to lay some
17 further foundation.

18 BY MR. WEBER:

19 Q. Mr. Schindler, again focusing back on that
20 period when -- when you did have involvement with the
21 sales and marketing in the late '70s, --

22 A. Yes.

23 Q. -- have you seen any documents showing research
24 of that type being done with under-age smokers?

25 A. No, I haven't.

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1 Q. Does R. J. Reynolds Tobacco Company use code
2 words to refer to under-age smokers?

3 A. Absolutely not.

4 Q. When you --

5 When you focus a brand on 18 to 24, I think we
6 saw some of those documents, --

7 A. Yes.

8 Q. -- what does 18 to 24 mean?

9 A. It means 18 to 24.

10 Q. Is it legal for 18-year-olds to buy cigarettes
11 in the United States of America?

12 A. Yes, it is.
13 Q. Is it legal for 18-year-olds to buy cigarettes
14 here in the state of Minnesota?
15 A. Yes, it is.
16 Q. Have you ever testified before, Mr. Schindler?
17 A. No, I haven't.
18 Q. Let's -- let me go into a little bit of your
19 background now, if I could.
20 When and where were you born?
21 A. I was born August 12th, 1944, in Harrisburg,
22 Pennsylvania.
23 Q. That makes you 53?
24 A. Yes, it does.
25 Q. Are you married?

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1 A. Yes.
2 Q. How long, sir?
3 A. It will be --
4 Well, it was 30 years last November, so we're
5 working on 31 years.
6 THE COURT: You'll be happy to know the
7 newspaper disagrees with that.
8 THE WITNESS: Pardon me? I didn't -- I
9 didn't hear you.
10 (Laughter.)
11 THE COURT: I think the newspaper had a
12 different age for you.
13 THE WITNESS: Oh. I understand they had me
14 at 50, and --
15 THE COURT: You may want to correct that.
16 THE WITNESS: -- that's fine. I'd be happy
17 to take three years off.
18 MR. CIRESI: So would we all.
19 BY MR. WEBER:
20 Q. Do you have any children, Mr. Schindler?
21 A. I have two daughters and a granddaughter.
22 Q. How old are your daughters?
23 A. My daughters are 24 and 21. Granddaughter is a
24 little over a year and a half.
25 Q. Where did you grow up, sir?

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1 A. Harrisburg, Pennsylvania.
2 Q. Go to high school there?
3 A. Yes, I did.
4 Q. When did you graduate from high school?
5 A. I graduated from Bishop McDevitt High School in
6 June of 1962.
7 Q. And what did you do after graduation from high
8 school?
9 A. After graduation I got my first full-time job
10 at Nationwide Insurance Company running a copying
11 machine and working in the mail room, and also had a
12 second part-time job working in a department store
13 selling shoes.
14 Q. Did you eventually continue your education?
15 A. Yes. In December of '65, I guess it was, I
16 returned to college full time at the Harrisburg Area

17 Community College and continued working 30 hours a
18 week or so in the shoe store, in the department
19 store.
20 Q. Did you get a degree from the community college?
21 A. Yes, I got an associate's degree.
22 Q. When was that?
23 A. In December -- I guess it was December -- or I
24 guess it was January. I'm getting my dates mixed up
25 here. It was -- I got it in December of '66, so '64

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1 that I started.
2 Q. What happened after you got your associate's
3 degree from Harrisburg Community College?
4 A. I was drafted into the Army.
5 Q. Did you attend Officer Candidate School?
6 A. Yes, I did.
7 Q. Where was that?
8 A. I went to infantry Officer's Candidate School at
9 Fort Benning, Georgia.
10 Q. And after you got out of -- out of -- excuse
11 me -- out of OCS, where were you posted?
12 A. Well after I got out of OCS, I went back to
13 Pennsylvania, married my fiance, Ellen, who's my
14 current wife, and we jumped in the car and drove to
15 California to my first assignment at Fort Ord,
16 California, in Monterey.
17 Q. Did you receive any special training there?
18 A. I was a training officer as a brand-new second
19 lieutenant, and we were training troupes in basic
20 training.
21 Q. What happened in -- I think it was November
22 1968?
23 A. Well in November of '68 I landed in Viet Nam.
24 Q. What unit were you with in Viet Nam?
25 A. I was with the Second Battallion, Seventh

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1 Cavalry, First Air Cavalry Division.
2 Q. Where were you stationed when you first got to
3 Viet Nam?
4 A. Oh, about -- up in Tay Ninh Province, about 85,
5 90 miles northwest of Saigon, up along the Cambodian
6 border.
7 Q. And your rank then was what, sir?
8 A. I was a first lieutenant.
9 Q. And what were your duties up along the Cambodian
10 border?
11 A. Well the first six months I was an infantry
12 platoon leader out in the field, out in the boonies
13 as we used to say. After doing that for six months I
14 was assigned to the battallion headquarters fire base,
15 which was out -- still out in the jungle, but in a
16 fixed position, working on the battallion staff. And
17 then my last two months in Viet Nam I was assigned to
18 the brigade staff back in Tay Ninh City, which was
19 their larger position and headquarters.
20 Q. In that first six months you were there, sir,
21 was that a combat assignment?

22 A. The whole --
23 Well the first six months was combat out in the
24 jungle along the Cambodian border. The whole 12
25 months was a combat assignment.

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1 Q. When did you leave the Army, Mr. Schindler?
2 A. In November of '70.
3 Q. And at the time you left the Army, what was your
4 rank?
5 A. I was a captain.
6 Q. Were you honorably discharged?
7 A. Yes, I was.
8 Q. Did you continue with college sometime
9 thereafter?
10 A. Well I got out of the Army in November of '70
11 and started back full time in college at a school
12 called Franklin Marshall College in Lancaster,
13 Pennsylvania. That was in January of '71.
14 Q. And when did you graduate from college?
15 A. I graduated from F&M in June of '72.
16 Q. And what did you do next?
17 A. From Franklin Marshall, my wife and I packed up
18 and went to Philadelphia, where I started my graduate
19 work in business at the Wharton School of Business at
20 the University of Pennsylvania in Philly.
21 Q. And how long a course of study was that?
22 A. It was two years.
23 Q. Did you study marketing theory and practice at
24 the Wharton School?
25 A. Marketing was part of the curriculum in the

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1 M.B.A. program.
2 Q. How did you come to be hired at R. J. Reynolds?
3 A. I was --
4 I had a research assistant's job at -- at
5 Wharton, which fortunately paid tuition, and I was
6 working for a professor, Dr. Rowan, who had a friend
7 that worked at R. J. Reynolds in our packaging
8 division, and he had sent my resume down to
9 Winston-Salem to this friend of his, and I guess he
10 gave it to the corporate personnel people and they
11 sent me a letter to come down for an interview.
12 Q. Now R. J. Reynolds Tobacco Company is located
13 where, Mr. Schindler?
14 A. In Winston-Salem, North Carolina.
15 Q. Do you know when it was founded?
16 A. I believe in 1875.
17 Q. Was there a -- was it named after --
18 Was there a real R. J. Reynolds?
19 A. Yes, there was a real R. J. Reynolds, Richard
20 Joshua Reynolds. That's where the RJR letters come
21 from.
22 Q. What are the current major brand families for
23 the R. J. Reynolds Tobacco Company?
24 A. Well it's Winston, Camel, Salem and Doral, are
25 the major brand families.

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- 1 Q. What's the largest brand family now?
2 A. The largest brand that we have is Doral.
3 Q. Now does R. J. Reynolds Tobacco Company have any
4 businesses other than the manufacture and marketing
5 of cigarettes?
6 A. We have a division called RJR Packaging, which
7 is a flexible packaging division that --
8 They essentially supply all of the packaging for
9 our cigarettes, but because of their capabilities,
10 they have the ability to sell their technology to
11 other businesses, so they have an outside business
12 also for various outside customers.
13 Q. Now at the time you joined R. J. Reynolds in
14 1974, did the packs of cigarettes that R. J. Reynolds
15 was marketing carry the Surgeon General's warning?
16 A. Yes.
17 Q. Has that been the case ever since?
18 A. Yes.
19 Q. Do you know when those warnings first went on?
20 A. Well I believe it was in '66.
21 Q. At the time you joined R. J. Reynolds, did R.
22 J. -- did advertisements for R. J. Reynolds'
23 cigarettes carry the Surgeon General's warnings?
24 A. Yes, they did.
25 Q. Is that --

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- 1 And has that since been true for the period at
2 R. J. Reynolds?
3 A. Yes.
4 Q. Now you said earlier in response to some
5 questions yesterday, I believe, that you think
6 cigarettes do carry risk of some health consequences
7 and serious disease.
8 A. Yes. I believe people that smoke have an
9 increased risk of lung cancer, heart disease,
10 emphysema, and other diseases that are associated
11 with smoking.
12 Q. Before joining Reynolds in '74 and before
13 becoming CEO in '95, I believe, did you consider
14 yourself the issues raised by working in a company
15 that makes a product that carries health risks?
16 A. Yes. When I interviewed with RJR and they made
17 the job offer, I -- one of the things I had to
18 consider before I, you know, would take the job or
19 accept the job was their -- you know, the health
20 risks of the product. You know, I believed then as I
21 believe now that there are health risks with this
22 product, and so I had to, for my own personal ethical
23 standpoint, work through that issue and was I
24 comfortable with it. And that's back when I was
25 at -- at Wharton, of course, when I was making that

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- 1 decision.
2 And, you know, I made that decision on the

3 basis, first of all, that it was a legal product, but
4 also from the standpoint that it is a risky product,
5 but that people, from my own ethical standpoint,
6 needed to be aware of that risk, and I --

7 MR. CIRESI: Excuse me, Your Honor, I --
8 I'm sorry, sir. Your Honor, this is not responsive
9 to the question. It's irrelevant.

10 THE COURT: We're starting to wander a
11 little bit. Maybe you should ask another question.

12 Q. Did you go through that same type of analysis
13 before becoming CEO?

14 A. Well my view about the risk of the product has
15 evolved over time from when I first joined as I
16 learned about -- more about the product as a plant
17 manager, head of manufacturing and so forth, and more
18 about the company's efforts to develop products that
19 address the risk issues with smoking. That became
20 part of my fundamental ethical basis of being in this
21 business and being comfortable with it, that we make
22 a product that has risk, that people need to be and
23 must be aware of those risks, and I need to be
24 working for a company that is working on products to
25 reduce that risk.

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1 On that basis, with all the issues that surround
2 this industry, I'm very comfortable being in this
3 business, the fact that we are working on products to
4 reduce those risks.

5 Q. Now since 1964, what has been the position of
6 the federal government whether cigarettes cause
7 disease?

8 A. The position of the federal government has --
9 has been that cigarettes cause disease.

10 Q. And since 1988, what has been the position of
11 the federal government as to whether cigarettes are
12 addictive under the Surgeon General's definition?

13 A. Well the position of the federal government is
14 that they are addictive.

15 Q. Now has the federal government, with those
16 beliefs in mind, allowed cigarettes to remain a legal
17 product in this country?

18 A. Yes. They're a legal product everywhere in the
19 country that I know of.

20 Q. Now does R. J. Reynolds sell cigarettes at
21 retail here in Minnesota?

22 A. No, we don't sell -- you know, actually sell
23 cigarettes at retail.

24 Q. Can you explain to the ladies and gentlemen of
25 the jury the system for marketing and distributing

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1 the cigarettes made by the R. J. Reynolds Tobacco
2 Company.

3 A. Well we -- we manufacture the product, we market
4 the product, we do advertisements on billboards, in
5 magazines, and run promotions. The product moves
6 through a distribution system. We sell the product
7 to what we call a direct customer, which would either

8 be a tobacco wholesaler or a retailer directly, and
9 then the cigarettes move through that distribution
10 change and -- chain and end up in a convenience
11 store, supermarket, drug store, some retail
12 establishment who sells cigarettes.

13 Q. What does a pack of R. J. Reynolds Tobacco
14 cigarettes cost in Minnesota, Mr. Schindler?

15 A. A -- a full-priced pack of cigarettes in
16 Minnesota -- and this is undiscounted, this is an
17 estimate without any discounts after it -- would be
18 about \$2.31 a pack.

19 Q. Are there taxes included in the price as well?

20 A. Yes.

21 Q. What's the current federal excise tax on a pack
22 of cigarettes?

23 MR. CIRESI: Excuse me. Objection, it's
24 irrelevant.

25 THE COURT: Oh, you can state that if you
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1 wish.

2 A. Twenty-four cents.

3 Q. And what is the current Minnesota excise tax on
4 cigarettes?

5 A. Forty-eight cents.

6 Q. Per pack?

7 A. Per pack, yes.

8 Q. Does R. J. Reynolds make a profit of 48 cents a
9 pack for each pack of cigarettes it sells?

10 A. No, we don't.

11 Q. How many employees are there at the R. J.
12 Reynolds Tobacco Company?

13 A. About 9200 people today.

14 Q. Nine thousand two hundred?

15 A. Yes, 9,200.

16 Q. Where are the manufacturing facilities located,
17 Mr. Schindler?

18 A. In Winston-Salem, North Carolina.

19 Q. How has the -- well let me strike that.

20 Has the employment numbers, the number of
21 employees at R. J. Reynolds, changed over the time
22 you've been with the company since 1974?

23 MR. CIRESI: Objection, irrelevant.

24 THE COURT: You may answer that.

25 A. It's --

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1 Well since 1988, it's come down about 35 to 40
2 percent; from around 15,000, a little over 15,000
3 employees, to about ninety -- 9,200 employees today.

4 Q. How are the employees of R. J. Reynolds in the
5 various departments informed of company policies?

6 A. Well we have formal company policies, and
7 they're informed, you know, through their chain of
8 command, through their managers, and training
9 programs and things of that nature.

10 Q. Are there policies for the sales and marketing
11 departments?

12 A. Yes, there are.

13 Q. How are those employees informed?
14 A. Well a sales rep is hired, most -- virtually all
15 of our salespeople are hired as sales reps, and then
16 they progress up through the organization. They go
17 through a training program in their jobs and how to
18 do their jobs, and as part of that training program
19 they are informed of the policies and practices
20 of -- you know, relative to youth smoking, other
21 aspects of the job.

22 Q. Are there policies for marketing research?
23 A. Yes, there are policies for marketing research
24 people and also policies for any marketing
25 research -- outside marketing research firms that you

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1 would hire to work with the marketing research group.

2 Q. There was some testimony yesterday, some
3 questions about the Tracker system. Do you remember
4 that?

5 A. Yes.

6 Q. Is the Tracker system set up in a way so as to
7 exclude smokers under 18?

8 A. I believe it is.

9 Q. Does R. J. Reynolds Tobacco Company want people
10 under the legal age to smoke to buy its products?

11 A. Absolutely not.

12 Q. Why is that?

13 A. Because, first of all, it's against the law for
14 them to do it. Equal to that, I believe, as I've
15 testified in this courtroom, that I -- somebody who's
16 14 or 15 or 16 years old is incapable, in my mind, at
17 that age, to make a decision about using a product
18 that has potential health risks to it. And -- and
19 it's just wrong for that to happen. And beyond that,
20 it would be the greatest thing in the world to
21 work -- wake up tomorrow morning and have nobody
22 under age smoking cigarettes; it would eliminate a
23 lot of grief in my life and in the life of many
24 people that work for this company.

25 Q. Now you said that R. J. Reynolds does not sell

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1 directly at retail; correct?

2 A. We don't -- we don't sell at retail.

3 Q. Has Reynolds taken steps to prevent under-age
4 access to cigarettes at retail?

5 A. Yes.

6 Q. Can you describe that for us.

7 A. We --

8 Relative to access, there was a program started
9 back in late 1991 called Support the Law, which was a
10 program designed to train and educate retailers and
11 their clerks in stores on -- on the need to card
12 people when they buy cigarettes to try and prevent
13 under-age folks from getting cigarettes. That
14 program, Support the Law, eventually ended up in
15 between 75 and 80 thousand retail outlets. That
16 started in in late '91. And then in '96 the industry
17 started a We Card program, which was essentially the

18 same program, only it involved the whole industry, so
19 we folded Support the Law into We Card. And the We
20 Card program, which is a training program for
21 retailers and support materials on carding, is in
22 hundreds of thousands of retail outlets across the
23 country.
24 Q. What type of training materials were included in
25 the --

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1 A. Well there were, you know, lesson plans,
2 guidelines, just the whole training kit that goes
3 with -- you know, materials and so forth to go with
4 conducting the training of your clerks.
5 Q. Training the clerks to check --
6 A. To card.
7 Q. -- to check for I.D's?
8 A. Yeah, make sure they card.
9 Q. Now does R. J. Reynolds have any other program
10 intended to address the decisions made by youths
11 themselves?
12 A. There was a program -- well it's in existence
13 today, and it started in -- again in that same period
14 of late 1991 called Right Decisions Right Now, and
15 it's directed at middle schools throughout the
16 country. Today it's in about 10,000 middle schools,
17 and by September of this year it should be in 12,000
18 middle schools throughout the country, which I
19 understand is about 90 -- would be about 90 percent
20 of the middle schools. That program is directed
21 at -- at providing teachers and parents lesson plans
22 and training materials, videos for dealing with kids
23 with regard to helping them avoid, you know, risky
24 behaviors like smoking, drugs, and other bad
25 lifestyle choices for young people. It focuses on

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1 supporting efforts already in the school system, but
2 focuses the resource on how to resist peer pressure
3 in these behaviors. There -- there are posters
4 provided. Those posters are on popular television
5 shows like ER, 90210, the French -- Fresh Prince of
6 Belair, with Will Smith Show and other TV shows have
7 these Right Decisions Right Now posters. When the
8 program was launched, Will Smith became a
9 spokesperson for it, and Danny Glover did some work
10 for us in the early development of that program.
11 Q. Now did R. J. Reynolds have the in-house
12 expertise to develop this program directed at
13 communicating to middle-school-aged kids?
14 A. No, no.
15 Q. How did you go about developing such a program?
16 A. Our external relations people were responsible
17 for having this program developed, worked with child
18 psychologists, educators, Lifetime Learning Center,
19 which is a group, I believe, out in the state of
20 Washington, to develop that, and this group continues
21 to oversee this program and update it and upgrade the
22 materials and so forth as time goes on.

23 Q. And what's been the reaction of the middle
24 schools to whom you've offered this program?
25 A. It's been very favorable. We --
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1 Each year an increasing number of schools want
2 to become involved in it, and I think that's a
3 measure of its effect and success, as it continues to
4 get other middle schools interested in obtaining this
5 training program and lesson plans and learning
6 materials.

7 Q. Mr. Schindler, is advertising of your brands
8 important to the business at R. J. Reynolds?

9 A. It's very important.

10 Q. Could you tell the ladies and gentlemen of the
11 jury why you believe advertising is important.

12 A. Well advertising is important for two basic,
13 fundamental reasons. One is you use advertising to
14 communicate with, you know, current adult smokers
15 that smoke your brands to reinforce your brand name,
16 your brand image, your brand position to people who
17 currently claim your brand as what we call your usual
18 brand, and you also use advertising to appeal -- try
19 to appeal to competitive adult smokers, to see if, in
20 the case of Winston, can you convince a Marlboro
21 smoker to try Winston, or in the case of Camel,
22 convince a Marlboro smoker to try Camel. So the two
23 core purposes of advertising is support your
24 franchise, your usual brand, and see if you can get
25 competitive adult smokers to try the brand.

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1 Q. Is the cigarette business a competitive
2 business?

3 A. It's extraordinarily competitive.

4 Q. Have there been major changes in the business
5 over the past, well let's say since the early '80s?

6 A. There's been some significant changes over the
7 early '80s. Over the last 40, 50 years, if you look
8 at the history of this business, industry leadership
9 has changed. I think back in the '40s, early '50s,
10 American Tobacco was the number one tobacco company,
11 then Reynolds became the number one tobacco company
12 to the late '70s, and then Philip Morris became
13 number one in late '70s, early '80s. There has
14 historically been product innovation that tends to
15 shift brand leadership around over time.

16 Probably the most unique change in the industry
17 in the '80s was the rise of the savings segment in
18 the business. In the early '80s there were virtually
19 no savings brands, private labels or discount brands
20 in the industry. As the '80s moved on, those brands
21 began to emerge in the marketplace. From the early
22 '80s up through 1992 they went from virtually no
23 share of market belonging to savings brands to about
24 33 or 34 percent by the end of 1992. It was a
25 dramatic shift in smoker loyalties. New brands

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1 emerged. An example would be our Doral brand, which
2 is our number one brand. We actually took it off the
3 market in the early '80s and then brought it back a
4 year or so later, brand-new, and from then until now
5 it now has six share points. And so there was a
6 tremendous shift in brand loyalties and changing
7 because of the discounting and the savings brands
8 emerging in the industry.

9 Q. Has the overall volume of the cigarette business
10 been declining in the years you've been at R. J.
11 Reynolds?

12 A. It peaked, as I recall, in 1982. The
13 industry --

14 Are you talking about the company or the
15 industry?

16 Q. Industry volume.

17 A. Industry volume peaked in 1982 at about 600 or
18 so billion cigarettes, and it has been essentially
19 declining since then, to last year the industry sold
20 around 480 billion cigarettes. They had about a 20
21 percent decline over that time period.

22 Q. Will the volume decline under the proposed
23 national settlement?

24 MR. CIRESI: Objection, Your Honor, calls
25 for speculation on the part of this witness.

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1 THE COURT: Sustained.

2 Q. Do you have a current belief, based on current
3 analysis, as to whether volumes will decline under
4 the national settlement?

5 MR. CIRESI: Objection, no foundation.

6 THE COURT: Sustained.

7 Q. If the national settlement as currently
8 contemplated is put into effect, will the price of
9 cigarettes increase substantially?

10 A. Yes, it will.

11 Q. And based on your years in the cigarette
12 business, if there's a substantial price increase,
13 will that affect volume?

14 A. It will reduce volume.

15 Q. Let me talk for a few minutes now -- or ask you
16 about the Joe Camel campaign. All right, sir?

17 A. Yes.

18 Q. Did the Joe Camel campaign win any awards from
19 advertising entities that review advertising on a
20 year-by-year basis?

21 A. I -- I believe --

22 Well yes, it did. I believe about every year
23 that the campaign was in existence it would place in
24 the top 10 top campaigns for print advertising
25 campaigns, it would win that award. It would be

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1 somewhere in that top 10.

2 Q. Did it cause --

3 Did the Joe Camel advertising campaign cause

4 smokers of competitive brands to switch to Camel?
5 A. Yes, it did.
6 Q. Do you believe that Joe Camel advertising
7 campaign caused anyone who wasn't a smoker to become
8 a smoker?
9 A. I don't believe Joe Camel caused anybody to
10 become a smoker who wasn't a smoker.
11 Q. Was Ms. Lynn Beesley at R. J. Reynolds involved
12 in the Joe Camel campaign?
13 A. Yes.
14 Q. What was her general involvement?
15 A. Lynn Beesley, who is our current executive VP of
16 marketing, she was the brand manager on the Camel
17 brand, she was the one responsible when the -- for --
18 for the brand when the Joe Camel campaign was
19 developed.
20 Q. Is Ms. Beesley going to come up here and testify
21 in this case?
22 A. Yes, she is.
23 Q. Now does the fact that you used a cartoon Camel,
24 the fact that it was a drawing, a caricature,
25 cartoon, whatever it's called, an illustration, does

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1 that show that this was somehow intended for
2 under-age people?
3 MR. CIRESI: Your Honor, objection, it's --
4 it's leading and suggestive.
5 THE COURT: It is leading and suggestive,
6 counsel.
7 Q. Did the Joe Camel campaign use the drawing of a
8 Camel?
9 A. Yes.
10 Q. Are there other advertising campaigns for
11 which -- of which you are aware, based on your
12 business experience and your marketing training, that
13 have used illustrations and drawings to advertise
14 adult products?
15 MR. CIRESI: Objection, it's irrelevant and
16 immaterial. We're not going to -- unless we're going
17 to try all those cases again.
18 THE COURT: Sustained.
19 Q. Do you know whether the Minnesota Lottery uses
20 Bullwinkle the Moose to advertise an adult product?
21 MR. CIRESI: Objection, Your Honor. It's a
22 follow-up on the previous question which was
23 sustained.

24 THE COURT: It is sustained, counsel.
25 Q. What department at R. J. Reynolds is responsible
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1 for product design and development, Mr. Schindler?
2 A. Research and development.
3 Q. Do you know how many employees there are in the
4 research and development department?
5 A. About 430, 440 people.
6 Q. Are there professionals there with doctorates?
7 A. Yes.
8 Q. Are any of them involved in the scientific

9 community outside of the company?
10 A. Yes, they are.
11 Q. Could you describe some of their activities.
12 A. Well a number of those folks have adjunct
13 professorships at medical schools and graduate
14 schools of science. They do that, you know, to
15 develop their professional skills and keep current in
16 their core scientific discipline, so they work in
17 different institutions in an adjunct way.
18 Q. Does R. J. Reynolds have toxicologists in its
19 R&D department?
20 MR. CIRESI: Your Honor, may we have a
21 timeframe?
22 MR. WEBER: In the time you've been at R.
23 J. Reynolds.
24 MR. CIRESI: I'm going to object if it goes
25 beyond 1994, Your Honor.

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1 MR. WEBER: Up to 1994, sir.
2 A. Yes, we had toxicologists.
3 Q. Has it had physical chemists up to 1994?
4 A. Yes.
5 Q. Has it had people trained in pharmacology up
6 till 1994?
7 A. Yes.
8 Q. I want you to assume the following, Mr.
9 Schindler: I want you to assume that plaintiffs'
10 counsel told the ladies and gentlemen of the jury on
11 opening statements that the defendants would do
12 nothing to change their products unless and until
13 they were required to do so by government or as a
14 result of being held accountable in litigation. Can
15 you assume that for me?
16 Now is that a true statement with respect to the
17 24 years -- does it accurately reflect the activities
18 of R. J. Reynolds in the 20-plus years you've been at
19 the company?

20 MR. CIRESI: Objection, no foundation.

21 THE COURT: Can you lay some foundation as
22 to what time you're talking about?

23 Q. As chief executive officer, as chief operating
24 officer, as a member of the Executive Committee since
25 1988, have you become generally familiar with R. J.

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1 Reynolds' activities in cigarette development?
2 A. Yes.
3 Q. Have you had to make decisions in that time
4 period to invest in certain technologies and
5 research?
6 A. Yes, I've had to.
7 Q. Now with that background, is the statement made
8 by plaintiffs' counsel an accurate reflection of R.
9 J. Reynolds' product development activities over that
10 period of time --
11 MR. CIRESI: Object --
12 Q. -- up to -- up to 1994?
13 MR. CIRESI: Well then it's irrelevant with

14 respect to any statement made in opening statement
15 because it went back 40 years. Objection.
16 THE COURT: Is this between 1988 and up to
17 1994? Is that the question?
18 MR. WEBER: I'll start -- yes, let's --
19 for --
20 Yes.
21 THE COURT: You will start there and you
22 will end there. Okay?
23 MR. WEBER: Okay.
24 Q. So in the period 1988 to 1994, is that an
25 accurate statement with respect to R. J. Reynolds and
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1 what it did in product development?
2 A. No, it's not.
3 Q. By the way, do you know a Dr. Sam Simmons?
4 A. Yes, I do.
5 Q. Was Dr. Simmons an employee in the biological
6 research division back in 1970?
7 A. It is my understanding that Sam worked in -- in
8 that -- what is called the Mouse House.
9 Q. Was he familiar with the work being done there?
10 MR. CIRESI: Well objection, Your Honor,
11 there's no foundation.
12 Q. To your knowledge.
13 THE COURT: You'll have to lay more
14 foundation than that, counsel.
15 Q. Do you have an understanding as to whether Dr.
16 Simmons worked for the biological research division?
17 A. My understanding is that he did.
18 Q. Did he do research there?
19 A. I don't know.
20 Q. Was he familiar with the research that was being
21 done there?
22 MR. CIRESI: Objection, Your Honor, there's
23 no foundation.
24 THE COURT: Okay. You've got to lay
25 foundation if you're going to --
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1 MR. WEBER: I'll stop -- I'm sorry.
2 THE COURT: I don't believe he was able to
3 give us any information this morning, so you'll have
4 to lay foundation before he'll be allowed to testify.
5 BY MR. WEBER:
6 Q. Is Dr. Simmons going to come here and testify
7 about his work in the biological research division?
8 A. Yes, he is.
9 Q. Now Mr. Ciresi asked you earlier about lower tar
10 and nicotine cigarettes. Do you remember that?
11 A. Yes.
12 Q. Has R. J. Reynolds invested in lower tar and
13 nicotine technology?
14 A. Yes, it has.
15 Q. Do you believe that R. J. Reynolds can prove
16 that lower tar and nicotine cigarettes are safer?
17 A. No, I don't believe we can prove that.
18 Q. Why has RJR invested and supported developments

19 for lower tar and lower nicotine cigarettes?
20 A. Because it was the consensus of public health
21 people and the scientific --
22 MR. CIRESI: Excuse me, Your Honor, I'm
23 going to object, it's calling for hearsay on the part
24 of this witness.
25 MR. WEBER: Well it's --
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1 THE COURT: You may answer.
2 May I rule?
3 MR. WEBER: Yes, Your Honor. I'm sorry.
4 THE COURT: You may answer.
5 MR. WEBER: Go ahead.
6 Q. Do you remember the question, Mr. Schindler?
7 A. I'd just ask it again so that I'm --
8 Q. Why has RJR invested in and supported
9 developments for lower tar and nicotine products?
10 A. Because it was the consensus of the public
11 health and scientific/medical community throughout
12 the world that the -- the most significant approach
13 to try to address the issues of risk in cigarettes is
14 through general reduction strategy, which was to
15 bring down the tar. And that is how Reynolds and in
16 fact all the companies in the U.S. -- the U.S.
17 companies that developed the technologies to bring
18 down tar in cigarettes, and that was the strategy
19 that the medical community, public health community
20 felt was the best one, and that is what the industry
21 pursued. And Reynolds, you know, made a significant
22 contribution to those advancements to try to deliver
23 products that smokers wanted that had substantial
24 reductions in tar, and that is how Reynolds, you
25 know, as well as the rest of the industry, became
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1 involved in that -- in that strategic direction.
2 MR. CIRESI: Your Honor, I move to strike
3 the answer insofar as it relates to medical community
4 and other companies. There's no foundation for this
5 witness to suggest that.
6 THE COURT: I'm going to let you
7 cross-examine on that, counsel.
8 MR. CIRESI: All right.
9 BY MR. WEBER:
10 Q. What was the Premier cigarette, Mr. Schindler?
11 A. It was a product that started development in the
12 very early '80s. It was a product whose fundamental
13 design was to heat tobacco as opposed to burning it.
14 And it started in the early '80s and was test
15 marketed starting in October of 1988.
16 Q. And was the Premier cigarette a traditionally
17 designed cigarette?
18 A. No, it wasn't.
19 Q. Did it burn tobacco?
20 A. No.
21 Q. Can you explain to the ladies and gentlemen,
22 just generally, without -- others will come in later
23 on the scientific/technical aspects -- but just

24 generally, based on what you know, how the Premier
25 cigarette worked?

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1 A. At the -- the tip of the cigarette where you
2 would, you know, normally have the fire crown or the
3 lit end of the cigarette, there's a carbon heat
4 source. In the rod itself there was tobacco, and
5 then in the center of that rod was a little capsule
6 that had little alumina beads inside that capsule
7 that had tobacco extracts on it, and then there was a
8 filtering system. And the way you smoked the
9 cigarette was you lit the heat source and then you'd
10 take a drag on the cigarette and it would pull the
11 heat over that system of tobacco, the capsule with
12 the beads, and through the filter. So the -- the
13 taste that was delivered was really like an aerosol
14 because you were pulling heat and you were not
15 burning down the cigarette. And so when you took a
16 drag and exhaled, you would see what appeared to be
17 smoke come out -- it was primarily effectively steam,
18 it was a -- and it would dissipate. And it had
19 virtually no secondhand smoke.

20 Q. Did it have traditional tar that comes off of a
21 traditional burning cigarette?

22 (Mr. Ciresi begins to stand.)

23 THE WITNESS: For some reason I can see him
24 (referring to Mr. Ciresi) better than I could see you
25 this morning.

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1 (Laughter.)

2 THE COURT: That's called paranoia.

3 THE WITNESS: Just been here too long.

4 MR. CIRESI: We've just been with each
5 other longer.

6 THE WITNESS: Sorry, Mr. Weber. Question,
7 please.

8 MR. WEBER: That was because I yelled at
9 him; he couldn't see me when I stood up to object and
10 he could see Mr. Ciresi much better.

11 THE COURT: You learn your lesson, counsel.

12 MR. WEBER: I guess.

13 Q. Did the Premier cigarette have traditional tar
14 of the type that comes off a traditionally burning
15 cigarette?

16 A. It has --

17 MR. CIRESI: Excuse me. Excuse me.
18 There's no foundation for this, Your Honor.

19 THE COURT: You can answer that.

20 A. It had a little bit. Virtually no tar.

21 Q. Were there any compounds in smoke in a
22 traditional cigarette -- or strike that.

23 Was the smoke chemistry the same in a Premier as
24 opposed to a traditional cigarette?

25 MR. CIRESI: Objection, Your Honor, there's

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1 no foundation for this witness to testify to that.

2 MR. WEBER: He was a major officer in the
3 corporation at the time, Your Honor.

4 THE COURT: Without any scientific
5 background.

6 MR. WEBER: That's right.

7 THE COURT: Okay. I don't know if he's
8 going to be a scientific expert in one area and not
9 another. If you're just making general questions,
10 fine. If you're going to pursue this matter, I'm
11 going to sustain the objection.

12 MR. WEBER: I just want to get a general
13 understanding of the cigarette as it was designed.

14 THE COURT: All right.

15 BY MR. WEBER:

16 Q. Was the smoke chemistry different in Premier as
17 opposed to a traditional cigarette?

18 A. It's my understanding that it was.

19 Q. Did Premier have nicotine?

20 A. Yes.

21 Q. At the level of a Light cigarette?

22 A. Really, as I recall, the level of an Ultralight.

23 Q. Did Reynolds ever get any patents for its work
24 on Premier?

25 A. Yes.

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1 Q. How was --

2 Well let me go back a second. Did R. J.
3 Reynolds publish and give to the scientific community
4 the results of its research on Premier?

5 A. Yes, they did. They had a -- or have a big
6 monograph that's about this thick (indicating
7 approximately six inches) that covered all the
8 science of the product in every way known to man. It
9 was about that thick.

10 Q. Did R. J. Reynolds brief the Surgeon General and
11 the FDA on this product?

12 A. Yes, they did.

13 Q. How did Premier do in the marketplace?

14 A. It failed in the marketplace.

15 Q. What is your understanding as an officer at R.
16 J. Reynolds as to why it failed in the marketplace?

17 A. It was difficult to light. It was a lot harder
18 to light than a normal cigarette, took a lot longer.
19 It had an unusual aroma as you smoked the cigarette,
20 and it just didn't taste that good.

21 Q. Did --

22 How much money, just roughly, if you know, was
23 invested in the Premier cigarette?

24 A. Well, about a billion dollars.

25 Q. Did R. J. Reynolds make any money, make any

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1 profit off the Premier cigarette?

2 A. No.

3 Q. Did it stop --

4 Because of the failure of Premier, did it stop

5 from trying to invest in new lower delivery cigarette
6 technology?
7 A. No. We are continuing to explore technologies
8 in that area.
9 Q. Did the experience with Premier lead to
10 investment in another product using similar
11 technology?
12 A. Yes, it did.
13 Q. And what's that product?
14 A. Eclipse.
15 Q. Has R. J. Reynolds made a profit on the Eclipse
16 product?

17 MR. CIRESI: Your Honor, I -- excuse me,
18 sir. Again, I take it this will only go up to 1994?

19 MR. WEBER: I'd like on this one, if Your
20 Honor will permit me, to spend a bit of time at the
21 side-bar. I don't think that ruling applies to this.
22
23
24
25

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1 (Side-bar conference as follows:)
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(Side-bar conference concluded.)

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1 THE COURT: We'll take a short recess.
2 THE CLERK: Court stands in recess.
3 (Recess taken.)
4 THE CLERK: All rise. Court is again in
5 session.
6 (Jury enters the courtroom.)
7 THE CLERK: Please be seated.
8 THE COURT: Counsel.
9 MR. WEBER: Thank you, Your Honor.
10 BY MR. WEBER:
11 Q. Mr. Schindler, do you remember being shown a
12 document by Mr. Ciresi from Philip Morris that spoke
13 about a Dr. Price from R. J. Reynolds?
14 A. Yes.
15 Q. Do you know whether in 1969 or 1970 there was a
16 Dr. Price at R. J. Reynolds?
17 A. I have no idea.
18 Q. Do you remember Mr. Ciresi asked you some
19 questions yesterday about a design process called the
20 REST, R-E-S-T, process?
21 A. Yes, I do.
22 Q. Was the REST process ever included as part of
23 the process for commercial cigarettes?
24 A. No, it wasn't.
25 Q. Could you turn to Plaintiffs' Exhibit 12800.

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1 I'm not sure which volume it's in, Mr. Schindler.
2 MR. CIRESI: Volume one, sir.
3 A. Yes, I've got it. I thought I had it.
4 Yeah. Okay, I've got it.
5 Q. You have it and maybe we don't.
6 Let me ask you this --
7 A. 12800, right?
8 Q. Right. And that was a series of documents that
9 consisted of a memorandum to Dr. DiMarco.
10 A. Yes.
11 Q. And that dealt with information on the use of
12 ammonia in cigarettes.
13 A. Yes.
14 Q. Could you turn to the second page of that

15 document.
16 A. Yes.
17 Q. And do you remember Mr. Ciresi asked you some
18 questions about the use of ammonia by R. J. Reynolds
19 Tobacco Company?
20 A. Yes.
21 Q. And he asked you, if I'm correct, about the
22 second use, which was ammoniation of reconstituted
23 tobacco. Do you see that?
24 A. Yes.
25 Q. Did he ask you any questions about the first
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1 listed use?
2 A. I don't recall that he did.
3 Q. And what's the first listed use there?
4 A. Denicotinization of burley tobacco.
5 Q. Now at the time of this memorandum --
6 In 1982, isn't that? Let me see if I can get a
7 better copy. Right, 1982.
8 -- was R. J. Reynolds using ammonia as part of
9 its tobacco processing to denicotinize tobacco?
10 A. Yes, it was.
11 Q. What does "denicotinize" mean?
12 MR. CIRESI: Objection, Your Honor, there's
13 no foundation for this witness.
14 THE COURT: Well you may answer if you
15 know.
16 A. To remove nicotine from the tobacco.
17 Q. When you were in charge of the manufacturing
18 plant --
19 And what years was that?
20 A. Oh, plant manager from October of '81 to
21 December of '86.
22 Q. Was the process referred to on this memorandum
23 that Mr. Ciresi didn't ask you about, the
24 denicotinization process, was that being used when
25 you were plant manager?

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1 A. Yes, it -- yes, it was.
2 Q. So you were familiar with it?
3 A. Yes. It was a process that was used to remove
4 nicotine from burley tobacco.
5 Q. And why was there such a process for burley
6 tobacco, as you understand it as one of the plant
7 managers at the time?
8 A. Well obviously tobacco is an agricultural crop,
9 so you maintain a very large inventory of tobacco
10 because you buy it every season. It's grown in
11 different regions of the country. Flue-cured burley,
12 just stay with that, there's different grades. Leaf
13 size varies depending, you know, on the -- on the
14 rain in a given season. But with tobacco, if you
15 have a dry season, the leaf will be smaller, but it
16 will still contain essentially the same amount of
17 nicotine that it would contain if it was a larger
18 leaf, only it's more concentrated in -- in the leaf.
19 And so you have all these variations in the leaf and

20 all these seasons. And the people that blend the
21 cigarettes or design the blends in R&D are balancing
22 these variations over time.

23 So somewhere back in the -- I guess in the '50s
24 or somewhere -- I'm not exactly sure when denic
25 started, but the process was used to help create an

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RECROSS-EXAMINATION - ANDREW J. SCHINDLER

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1 inventory of burley leaf that would enable you to
2 balance all these differences that occur naturally
3 and over time. And that process actually --

4 When I was the head of manufacturing in around
5 1994, '93, as I recall, we shut the process down,
6 frankly, as a cost reduction, because we weren't
7 really at that point processing that much leaf
8 through it. So we said why are we doing this? And
9 we just shut it down.

10 Q. Does the management at R. J. Reynolds Tobacco
11 Company, Mr. Schindler, remain committed to investing
12 in technology to reduce or simplify the constituents
13 of smoke?

14 A. Absolutely.

15 Q. And have they had that commitment during the
16 time you've been in management?

17 A. Absolutely.

18 MR. WEBER: I have no further questions
19 now, Your Honor. Thank you.

20 RECROSS-EXAMINATION

21 BY MR. CIRESI:

22 Q. Good afternoon, sir.

23 A. Good afternoon.

24 Q. Now in response to some questions from Mr.
25 Weber, you talked about the fact that tobacco is a

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RECROSS-EXAMINATION - ANDREW J. SCHINDLER

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1 legal product; correct?

2 A. Yes.

3 Q. Legal here in Minnesota; correct?

4 A. Yes, it is.

5 Q. You're not under any impression that this suit
6 is to make the tobacco -- the cigarette illegal; are
7 you?

8 A. No.

9 Q. Okay. Now you know that you can sell a legal
10 product illegally; don't you?

11 A. I think that's true.

12 Q. So that if some manufacturer is selling a legal
13 product and they're selling that legal product
14 illegally in violation of the laws, they should be
15 held accountable; correct?

16 MR. WEBER: Objection to the "held
17 accountable" again, Your Honor.

18 THE COURT: You may answer.

19 A. I didn't understand your question the first
20 time. I --

21 Well I didn't. When you said -- if you'll allow
22 me a second. When you said you can't sell a legal
23 product illegally, I agree. I don't know how you
24 sell a product that's legal that's illegal.

25 Q. Well, you can't violate the laws in selling a
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1 legal product; can you?
2 A. Yeah, right. I -- I would agree. Yes.
3 Q. So that if a manufacturer of some product, a
4 legal product under the laws, is selling it in
5 violation of laws, they should be held accountable;
6 correct?
7 A. If some --
8 MR. WEBER: Same objection, Your Honor.
9 A. If some --
10 THE COURT: No, you may -- you may answer.
11 A. If somebody violates the law, they should be
12 held accountable for violating the law.
13 Q. Yeah. If they're misrepresenting the product,
14 they should be held accountable; correct?
15 A. If somebody misrepresented the product, I --
16 they would be held accountable.
17 Q. If they --
18 MR. CIRESI: May I approach, Your Honor?
19 Q. If they violate promises and representations
20 that they have been made -- that have been made to
21 the public, they should be held accountable; correct?
22 MR. WEBER: Your Honor, I'd add a
23 additional objection now. No questions were asked
24 about the Frank Statement, and this was gone through
25 in Mr. Ciresi's opening questioning.

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1 THE COURT: Well I think he can answer that
2 question.
3 MR. CIRESI: You may answer, sir.
4 THE WITNESS: Can you repeat the question?
5 MR. CIRESI: Sure. May I have it back,
6 please.

7 (Record read by the court reporter.)
8 A. You're asking an abstract question, if somebody
9 violates some representation? Sure.
10 Q. Okay. Now you said that you wouldn't sell to
11 14- and 15- and 16-year-olds -- I take it also
12 17-year-olds -- because they can't make the
13 appropriate judgments; correct?
14 A. Yes.
15 Q. And that you only advertise to people of legal
16 age; correct?
17 A. Our marketing programs are developed to -- you
18 know, with people, that we don't talk to anybody
19 under the age of 21, and that's how we develop all of
20 our marketing programs when we interact in focus
21 groups, quantitative research. We talk to people 21
22 and above, and that's how we develop our advertising,
23 promotion, packaging, and product programs.
24 Q. Sir, do you market to 18-year-olds?
25 A. Eighteen-year-olds see ads and are of legal age

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1 to buy cigarettes.
2 Q. Now have you been on highways where there's no
3 speed limit?
4 A. No, not in recent times. Many years ago in
5 Nevada I remember being on highways without speed
6 limits.
7 Q. All right.
8 A. Been in Germany without speed limits.
9 Q. Now if you're on a highway without a speed
10 limit, would you drive a hundred miles an hour down
11 the highway if you saw children along the sides?
12 MR. WEBER: Objection, Your Honor, there
13 were no questions about speed limits on the direct.
14 THE COURT: Well that is true, but I'm
15 going to see if this is preliminary to any relevant
16 question.
17 Q. Would you, sir?
18 A. I don't drive a hundred miles an hour. I did on
19 the Autobahn once. But I don't drive a hundred miles
20 an hour. And if there were kids or adults or cows or
21 anybody or anything along a road, why I wouldn't
22 drive a hundred miles an hour. I don't drive a
23 hundred miles an hour.
24 Q. Slow down, wouldn't you?
25 A. I would think so, if they're right on the side

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1 of the road.
2 Q. You would take action that was prudent in light
3 of how your activities may have affect those around
4 you; correct?
5 A. Yeah. In that situation, sure.
6 Q. And when you advertise as a manufacturer, you
7 should take account of how your activities may affect
8 those who come in contact with that advertisement;
9 correct?
10 A. I think that's true.
11 Q. And that would include children of 14, 15, 16
12 and 17; correct?
13 A. Yes.
14 Q. Now you said that you spent a billion dollars on
15 Premier?
16 A. About that, yes.
17 Q. Did anybody give you some document by which RJR
18 calculated what they spent on Premier?
19 A. That's the estimate that our financial people
20 have.
21 Q. Who gave you that?
22 A. It -- it came from our financial people in the
23 company.
24 Q. Who?
25 A. Well Ken Lapiejko is our chief financial

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1 officer.
2 Q. Did Mr. Lapiejko tell you that?
3 A. I was talking, yeah, with Ken Lapiejko and Dave
4 Iauco, who had been in charge of our Premier project,
5 and we spent the better part of a billion dollars on

6 that project.
7 Q. Are you aware that in this case, information was
8 provided to us that showed from 1954 to 1994, the
9 entire amount you spent on research and development
10 was 1,127,486,000 dollars?
11 A. I don't --
12 No, I don't know that.
13 Q. Are you telling the ladies and gentlemen of the
14 jury that all but 127 million dollars of that entire
15 period of time was spent on Premier?
16 A. No.
17 Q. Nobody gave you that number; did they, sir?
18 A. What do you mean?
19 Q. The billion-dollar number.
20 A. Yes. My financial group.
21 Q. Did they give you any documents to back that up?
22 A. I don't have any documents with me, but I'd be
23 happy to get you the backup for that.
24 Q. Have you ever seen a document which suggested
25 you spent a billion dollars on Premier?

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1 A. I've had discussions with my financial people
2 and the head of the project, and the estimate is that
3 we have spent in the neighborhood of a billion
4 dollars a year on this project.
5 Q. A billion dollars a year?
6 A. I mean a billion dollars in total since the
7 project started.
8 Q. Have you ever seen a document which verified --
9 A. No, I don't recall.
10 Q. -- that RJR spent a billion dollars on Premier?
11 A. No. It was in discussions with my financial
12 people.
13 Q. You've never seen such a document; have you,
14 sir?
15 A. No, but I'm sure that's about what we spent on
16 this thing, and I'd be happy to get that information
17 for you and get it back to you.
18 Q. Sir, you've never seen such a document; correct?
19 A. I don't believe I have.
20 Q. And was RJR accurate in the information it
21 provided to us for discovery in this case?
22 A. I haven't seen the information. I assume they
23 were accurate.
24 Q. Did they intend to be accurate?
25 A. I would assume so, of course.

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1 Q. Now Mr. Weber asked you about Exhibit 12800;
2 correct? Right at the end. Do you remember that?
3 A. Yes.
4 Q. Denicotinization.
5 A. Correct.
6 Q. Now when you do reconstituted leaf, do you
7 denicotate?
8 A. No. Well --
9 No, not exactly. What happens in reconstituted
10 process -- the reconstituted process, you're taking

11 stems, small particles of tobacco, dust that can't
12 make it through the normal manufacturing process, and
13 so rather than disposing of it, back in the '40s the
14 process was created to use that tobacco material, and
15 essentially what it is is a paper process. So that
16 material goes through a process that removes water
17 solubles from the solid matter, the solid matter is
18 then put on a sheet, and through that process the
19 same water solubles that were in those particles that
20 had been removed are sprayed back onto the sheet in
21 order to make a sheet of tobacco. And that's what
22 reconstituted sheet is, or as we call it, G7 in our
23 process.
24 Q. We've seen it here, sir.
25 A. Oh, okay.

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1 Q. And the nicotine is taken out, then put back;
2 isn't it?
3 A. Well yes. Nicotine, tobacco extract, materials
4 that are in that tobacco are removed and put back in
5 that same tobacco.
6 Q. Correct.
7 Now sheet is mixed with burley; correct?
8 A. Burley, flue-cured, Turkish, a variety of
9 tobaccos.
10 Q. And it's blended together; correct?
11 A. Yes.
12 Q. Blended together according to a formula;
13 correct?
14 A. There would be a blend design for every
15 cigarette -- or every brand style, yes.
16 Q. And nicotine in a tobacco crop will vary from
17 year to year; correct?
18 A. Sure.
19 Q. And the people who are doing your blending have
20 to make sure that the blend meets the formula;
21 correct?
22 A. Yes.
23 Q. And sometimes in order to do that, in the past
24 they denicotinated burley; didn't they, depending
25 upon the crops?

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1 A. Yes. They had an inventory of leaf to help
2 balance this whole thing out.
3 Q. So that it would meet the formula; correct, sir?
4 A. Yes. You're using the term "formula." Blend
5 design, yes.
6 Q. And part of that formula was how much nicotine
7 would be in the cigarette; correct?
8 A. Well, the way a cigarette is designed, you --
9 you say let's -- we're going to make a full-flavor
10 cigarette, so you have a tar level for that which --
11 and then once you establish tar level, you develop
12 designs, you test them until people say that's the
13 one I like, and that will end up with a tar and
14 nicotine level that as you produce the product you
15 try to maintain. You don't want -- you --

16 You have two reasons. One, you have to take
17 finished product, smoke it on the FTC machines, and
18 submit that data to the FTC to verify that the tar
19 and nicotine level of that particular brand style is
20 what you are saying it is to the FTC. And so that's,
21 obviously, one of the reasons you want to maintain
22 that. And you don't want -- because it's an
23 agricultural product, if everything is varying all
24 over the place over time, you don't alter the taste
25 so that, pack to pack or carton to carton or over

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1 some period of time, it might taste different.

2 Q. Is your answer yes?

3 A. Yes.

4 Q. Thank you.

5 A. I thought I'd explain how this worked.

6 Q. So you're trying to meet the formula. One
7 aspect of the formula is how much nicotine is to be
8 in the cigarette; correct?

9 A. The starting place is tar and taste, and you end
10 up with a nicotine that will derive from that, and
11 then you're maintaining that tar and nicotine level.

12 Q. Is your answer yes?

13 A. Yes.

14 Q. Thank you.

15 Now you mentioned that the Joe Camel campaign
16 won 10 campaign awards; is that right?

17 A. I said that --

18 I believe I said that most of the years that it
19 was in the market it would be placed somewhere in the
20 top 10 of print advertising campaigns.

21 Q. Was it criticized by advertising executives for
22 targeting children?

23 A. I think that Joe Camel over its history
24 eventually was criticized by almost everybody.

25 Q. Is your answer yes?

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1 A. Yes.

2 Q. Now you talked about low tar/low nicotine
3 cigarettes; correct?

4 A. Yes. Are you referring back to tar reduction
5 and -- tar and nicotine reduction over time? Right?

6 Q. Yes. And you mentioned something about the
7 worldwide medical community.

8 A. Yes.

9 Q. What specific document did you have in mind?

10 A. I don't have a specific document in mind. I had
11 discussions with scientific people, my scientific
12 people, as we've discussed this issue over the years,
13 that -- that generally the public health community in
14 the United States and Europe favors a general
15 reduction of tar in -- in cigarettes as a direction
16 to go to attempt to develop designs that reduce risk.

17 Q. No document; correct, sir?

18 A. No, don't have a document.

19 Q. Not a one; correct?

20 A. Not a one.

21 Q. You can't point to one --
22 A. No.
23 Q. -- health organization which said that; can you?
24 A. Absolutely can't.
25 Q. Pardon me?

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1 A. No, I can't.
2 Q. You can't point to one other company that had
3 any data that would support such assertion; can you?
4 A. I don't have any data available with me.
5 Q. Not a one; correct?
6 A. None that I can lay out here today.
7 Q. And in fact, sir, you yourself -- and by "you
8 yourself" I mean RJR -- has no data to confirm that
9 low tar/low nicotine are safer; do you?
10 A. No, I don't have any data.
11 Q. None; correct?
12 A. I cannot --

13 No, I have no data to confirm that low tar
14 cigarettes are safer.

15 MR. CIRESI: Thank you, sir. I have no
16 further questions.

17 RECIRECT EXAMINATION

18 BY MR. WEBER:

19 Q. Mr. Schindler, with respect to the issue of
20 expenditures on the Premier/Eclipse project, --
21 A. Yes.
22 Q. -- were there expenditures that were made other
23 than R&D expenditures?
24 A. There are expenditures made that, because of
25 accounting, wouldn't show up in the R&D budget.

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1 Q. Was the equipment available commercially to
2 manufacture Eclipse -- or excuse me, Premier?
3 A. Some was, some wasn't. Required some unique
4 equipment, some very unique customization of existing
5 equipment. It required building a new plant.
6 Q. Okay. Did you --
7 And you did have to build a new plant?
8 A. Yes.
9 Q. And you needed to create and buy equipment?
10 A. Oh, yes.
11 Q. And were there marketing expenses as well?
12 A. Yes.
13 Q. So R&D wasn't the only expenditure; was it?
14 A. No.
15 Q. And with respect to the issue of designing
16 cigarettes, each brand style that R. J. Reynolds
17 produces is a brand style for which it reports to the
18 Federal Trade Commission a tar and a nicotine level;
19 isn't that correct?
20 A. Yes. We're required to do that.

21 MR. WEBER: No further questions.

22 THE COURT: You may step down, you'll be
23 glad to hear.

24 THE WITNESS: Thanks, judge.
25 (Witness excused.)

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1 MR. WEBER: Your Honor, we need about five
2 minutes, maybe a little bit less to get matters in
3 order for the next witness.
4 THE COURT: We'll take a five-minute, more
5 or less, recess.
6 THE CLERK: Court stands in recess.
7 (Recess taken.)
8 THE CLERK: Court is again in session.
9 (Jury enters the courtroom.)
10 THE CLERK: Please be seated.
11 THE COURT: Counsel.
12 MS. WALBURN: Thank you, Your Honor.
13 Good afternoon, ladies and gentlemen.
14 (Collective "Good afternoon.")
15 MS. WALBURN: Plaintiffs call Professor
16 Cheryl Perry.
17 (Witness sworn.)
18 THE CLERK: Please state your name and
19 spell your last name.
20 THE WITNESS: Cheryl L. Perry, P-e-r-r-y.
21 THE CLERK: Thank you. Please have a seat.
22 CHERYL L. PERRY
23 called as a witness, being first duly
24 sworn, was examined and testified as
25 follows:

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1 DIRECT EXAMINATION
2 BY MS. WALBURN:
3 Q. Good afternoon, professor.
4 A. Good afternoon.
5 Q. What is your current position?
6 A. I'm a professor in the Division of Epidemiology
7 in the School of Public Health at the University of
8 Minnesota.
9 Q. And were you involved in the publication of the
10 1994 Surgeon General's report?
11 A. Yes, I was.
12 Q. What was the subject of that report?
13 A. The subject was preventing tobacco use among
14 young people.
15 Q. We'll come back to that report in a moment.
16 Can you tell us, professor, have you ever
17 testified in a courtroom before?
18 A. No, I haven't.
19 Q. How long have you taught at the University of
20 Minnesota?
21 A. Well I came here in 1980 as an assistant
22 professor, so I've been in Minnesota now about 18
23 winters.
24 (Laughter.)
25 Q. And you came here from California?

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1 A. Yes, I did.

2 THE COURT: Do you ever stay for summer?
3 (Laughter.)
4 THE WITNESS: I love summer.
5 THE COURT: So do we all.
6 Q. What courses do you currently teach at the
7 University of Minnesota?
8 A. I teach two courses for doctoral students on the
9 principles of human behavior, and I also teach a
10 course for master's-level students called "Preventing
11 High Risk Behavior Among Young People."
12 Q. Can we turn to your educational background.
13 You received your undergraduate degree from
14 UCLA?
15 A. Yes, I did.
16 Q. And what was your major at UCLA?
17 A. It was mathematics.
18 Q. Did you then go on to receive a master's degree?
19 A. Yes. I went to the University of California at
20 Davis and I received my master's in education in
21 1973.
22 Q. While you were earning your master's degree, did
23 you teach school?
24 A. Yes. I taught junior high and high school for
25 four years in the Davis and Sacramento City School
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1 District.
2 Q. And did you go on to become a vice-principal?
3 A. Yes. I was a vice-principal of the only junior
4 high school in Davis, California.
5 Q. Did you then return to school to receive a
6 doctorate?
7 A. Yes. I went to Stanford, the university, and
8 received my Ph.D. in 1980.
9 Q. What was your major at Stanford?
10 A. Well my major was in the School of Education,
11 and it was a program called "The Design and
12 Evaluation of Educational Programs," and then we were
13 also required to have a minor, and my minor was in
14 adolescents.
15 Q. And professor, you are a behavioral scientist?
16 A. Yes, I am.
17 Q. And could you describe what that is, please.
18 A. Yes. Well in kind of the simplest terms, a
19 behavioral scientist is someone who studies human
20 behavior. So we study behavioral theory or behavior-
21 change methods. And since my interest is in
22 community-wide behavior, those behavior-change
23 methods might include mass communications like
24 advertising.
25 Q. And within behavioral science, do you have any
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1 specific area of interest?
2 A. Yes, adolescent behavior.
3 Q. At Stanford, what did your course work include?
4 A. Well my course work was in the behavioral
5 sciences, so I learned about behavioral theory and
6 behavior change methods. I also learned about

7 educational theory and curriculum design, and I
8 learned about research design, and of course took a
9 lot of statistics classes.
10 Q. Did you also at Stanford work with adolescent
11 specialists in different fields?
12 A. For my minor I worked with specialists in
13 adolescent sociology, I worked with an adolescent
14 medicine specialist and worked with her program, as
15 well as adolescent psychology.
16 Q. Did you study communications at Stanford?
17 A. Yes. I was quite fortunate in, about two weeks
18 after getting to Stanford, that I received a research
19 job in the Department of Communications.
20 Q. And can you tell us a little bit about what that
21 research job involved.
22 A. Yes. I was -- I was working with one of the
23 leading communications research experts, and we --
24 what we did -- and I worked with him for four
25 years -- we began to design smoking prevention and

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1 heart disease prevention programs for children and
2 adolescents.
3 Q. And did that research involve cigarette
4 advertising?
5 A. Yes. We were looking at cigarette advertising
6 and how it might influence young people and how we
7 might teach young people how to resist those
8 influences.
9 Q. Did your research there involve peer groups?
10 A. Yes. We were trying to also see how we could
11 influence the peer groups to support non-smoking.
12 Q. And what is a peer or peer group?
13 A. Well at that age, in adolescents, a peer group,
14 you can think of just people your own age. It might
15 be different when we are adults, but for that age
16 group it's just about the same age as yourself.
17 Q. Have you received any grants for your research
18 over the years?
19 A. Yes, I have. I've received about 35 grants for
20 my work.
21 Q. And about how many of those grants relate to
22 smoking and youth?
23 A. About half the grants, research grants had
24 something to do with -- with smoking and youth.
25 Q. And what is your main research area?

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1 A. My main research area now, and has been since
2 coming to Minnesota, has been in the designing,
3 developing, implementing and evaluating large-scale
4 community-wide programs to improve the health of
5 children and adolescents.
6 Q. Have you served on any editorial boards for
7 journals?
8 A. Yes. Over the course of my career I served on
9 five editorial boards.
10 Q. Have you served as a peer reviewer of scientific
11 literature for journals?

12 A. Yes, I do that all the time, I'm sent articles
13 and then review. So I review for -- pretty regularly
14 for the American Journal of Public Health, for the
15 Journal of the American Medical Association, for a
16 journal called Preventive Medicine, so forth.

17 Q. Do you also publish in the scientific
18 literature?

19 A. Yes, I do.

20 Q. How many papers have you published in
21 peer-reviewed journals?

22 A. I have over 150 papers in the peer-reviewed
23 literature now.

24 Q. How many of those papers relate to the health of
25 children and adolescents?

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1 A. I think nearly all of them relate to the health
2 of children and adolescents.

3 Q. And how many of your published papers would
4 relate to adolescent smoking?

5 A. I think, again, about half have something to do
6 with adolescent smoking.

7 Q. What has been the major emphasis of those papers
8 on adolescent smoking?

9 A. Well again, my major interest in smoking has
10 been in designing, developing, implementing and
11 evaluating smoking prevention programs for young
12 people, particularly young adolescents.

13 Q. Can we discuss a couple of the papers that
14 you've published, starting with the first paper in
15 this area, "Adolescent Smoking: Onset and
16 Prevention," which was published in Pediatrics in
17 1979; is that correct?

18 A. Yes.

19 Q. Can you tell us about that research and that
20 publication.

21 A. Yes, I can.

22 That was my very first paper in smoking
23 prevention, and this resulted from my work in
24 communications. This was in the mid-'70s when I
25 arrived at Stanford, and at that time there had been

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1 government surveys done showing that even though
2 adults were quitting smoking after the first Surgeon
3 General's report, that in fact youth -- the rates of
4 youth smoking really weren't going down as much as
5 they thought they would, and in fact among young
6 females the rates were actually going up, so of
7 course the government was quite concerned about that.
8 So they had already funded some studies, and -- which
9 had taught children in school and adolescents about
10 the harmful effects of smoking, and they'd found that
11 those -- those studies had had no influence on their
12 smoking behavior, they didn't have any effect.

13 So we decided to take a new approach to smoking
14 prevention, and what we wanted to do was to teach
15 adolescents about the environmental influences to
16 smoke and ways to resist those influences. And the

17 two main environmental influences that we were --
18 that we focused on were cigarette advertising and
19 peers. So, for example, with cigarette advertising,
20 we wanted the students to learn how to look at an
21 advertisement and then be able to counter-argue in
22 their heads what they saw in the advertisement. So,
23 for example, if they saw a woman who was smoking and
24 looking -- and being portrayed as liberated, they
25 would learn to think, well, she can't be so liberated

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1 if she's hooked on tobacco. So trying to learn to
2 counter-argue those advertisements to really see
3 what's going on with those.

4 We had older students, high school students
5 working with the -- this was in the junior
6 high -- with the junior high students to deliver the
7 program. So it wasn't adults giving the program, it
8 was these older students that we had trained.

9 Q. You mentioned, professor, that in those early
10 years of your work, that programs which discussed the
11 harmful effects of smoking were not shown to impact
12 smoking rates among youth. Can you tell us why
13 briefly?

14 A. Well adolescents really don't understand or
15 can't process the consequences of smoking. Those
16 consequences to them are -- are remote and irrelevant
17 to them.

18 Q. Can we move to one of your more recent articles.
19 Did you publish an article in the American Journal of
20 Public Health in 1992 titled "Community-Wide Smoking
21 Prevention: Long-term Outcomes of the Minnesota
22 Heart Health Program and Class of 1989 Studies?"

23 A. Yes, I did.

24 Q. And can you tell us about that research and that
25 publication.

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1 A. Yes, I will. Now this -- in this study we
2 embedded smoking prevention in a whole community-wide
3 program that was called the Minnesota Heart Health
4 Program, so we embedded smoking prevention in the
5 schools within a larger community program. This
6 study began in 1983, and I worked with students who
7 were in the sixth grade -- this was done in Fargo and
8 Moorhead -- so they were in sixth grade in 1983, and
9 we followed them and worked with them until they were
10 high school seniors in 1989. They had smoking
11 prevention programs in the seventh grade and a
12 smaller follow-up program in the eighth grade and the
13 ninth grade.

14 Now in addition to the programs in the school,
15 then they were also exposed to what was going on in
16 the community, which were primarily programs, mass
17 media, other kinds of programs aimed at trying to
18 help adults quit smoking. So the adolescents had
19 their program in school and the community-wide
20 program as well.

21 Now this program in the school was somewhat

22 similar to what we had done before, and that is we
23 focused on advertising and we focused on peers and
24 ways to resist influences, those environmental
25 influences. In this program we had the students,
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1 though, look at advertising and tell -- tell us, tell
2 each other really, what was really being sold in the
3 advertisement. So, for example, we might show an
4 advertisement with a man -- a cowboy on it, and we'd
5 ask, well, what -- what are they really selling? And
6 the adolescents would say to us, well, they're really
7 selling independence or they're really selling good
8 looks, not cigarette smoking. So -- and again, we're
9 trying to get them to counter-argue to realize what
10 was going on in the advertising and to counter-argue.

11 In these programs also we used same-age peer
12 leaders. The last one, the older ones, it turned out
13 it worked better. We used same-age elected peer
14 leaders and they ran -- really ran the program. We
15 trained them and they ran the program. So we tried
16 to make peer influence a positive -- go in a positive
17 direction. So peer pressure was kind of turned
18 around, peer pressure became a good thing rather than
19 a bad thing.

20 Q. What if anything did this research show about
21 peer influence in adolescent behavior?

22 A. Well it showed that peer influence -- that --
23 that we or the society can influence peers either in
24 a positive or a negative direction.

25 Q. Professor, has your research focused on
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1 affecting the onset, that is, the uptake of smoking
2 among young people, or has it focused on trying to
3 help young people quit smoking after they started?

4 A. For the most part, almost all my research has
5 been on preventing the onset of smoking.

6 Q. And in addition to your publications, have you
7 also made presentations and speeches around the
8 country and around the world about smoking and youth?

9 A. Yes, I have.

10 Q. I'd like to list a few of those. Did you in
11 1996 speak in Singapore on "Peer-led Approaches to
12 Smoking Prevention in the U.S. and Singapore" to the
13 Training and Health Education Department, Ministry of
14 Health for the World Health Organization?

15 A. Yes, I did.

16 Q. In 1995 were you an invited speaker in Osaka,
17 Japan on the topic "The Minnesota Heart Health
18 Program: Theory, Programs and Results?"

19 A. Yes, I was.

20 Q. In 1995 did you also speak in New Dehli, India,
21 on the 1994 Surgeon General's report?

22 A. Yes, I did.

23 Q. In 1994 were you an invited speaker to the
24 American Heart Association meeting in Chicago, also
25 on the 1994 Surgeon General's report?

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- 1 A. Yes, I was.
2 Q. In 1993 were you an invited speaker at Harvard
3 University School of Public Health on community
4 health promotion programs?
5 A. Yes, I was.
6 Q. In 1988 were you an invited speaker at the
7 Center for Disease Control in Atlanta on
8 international youth health promotion?
9 A. Yes, I was.
10 Q. And in 1987 were you an invited speaker at the
11 Hazelton Foundation in Minneapolis on psychosocial
12 approaches to drug abuse prevention?
13 A. Yes, I was.
14 Q. Did you also serve in a role in the 1994
15 publication by the Institute of Medicine called
16 "Growing Up Tobacco Free?"
17 A. Yes. I was part of the scientific committee
18 that prepared that document.
19 Q. And is the Institute of Medicine a part of the
20 National Academy of Sciences?
21 A. Yes, it is.
22 Q. Can we turn to the 1994 Surgeon General's report
23 on preventing tobacco use among young people, and I
24 believe there's a copy in front of you. This has
25 been marked and previously admitted into evidence as

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6899

- 1 Exhibit 3824.
2 You stated, professor, that you were the senior
3 scientific editor for that report?
4 A. Yes, I was the senior scientific editor.
5 Q. And this was published by the U.S. Department of
6 Health and Human Services?
7 A. Yes, it was.
8 Q. Would you turn to the page that has Roman
9 numeral small v, the acknowledgments page.
10 A. Okay.
11 Q. And directing your attention to midway down on
12 the left-hand column where it states who the editors
13 of the report were, and that lists your name?
14 A. That's me.
15 Q. Can you identify the other two people --
16 A. Yes.
17 Q. -- who are listed as editors of the report?
18 A. Yes. Gayle Lloyd and Fred Hull both worked at
19 the Centers at the Office on Smoking and Health, and
20 so did the technical editing and organizing for the
21 report.
22 Q. Would you turn to page five of the report. In
23 the left-hand column, the section called "Development
24 of the Report." I'd like to read you a portion of
25 that and ask you a question about it.

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6900

- 1 Midway down the first paragraph under
2 "Development of the Report" it states, "This report

3 is the first to focus on the problem of tobacco use
4 among young people. Given the continuing onset of
5 use in adolescence and the growing evidence of health
6 consequences associated with early use, the report
7 was seen as both needed and timely.

8 "The current report has been produced through
9 the efforts of experts in the medical, pharmacologic,
10 epidemiologic, developmental, economic, behavioral,
11 legal, and public health aspects of smoking and
12 smokeless tobacco use among young people. Initial
13 manuscript for the report were prepared by 28
14 scientists who were selected for their expertise in
15 specific content areas. This material was
16 consolidated into chapters, each of which underwent
17 peer review. The entire document was reviewed by a
18 number of experts in the field, as well as by
19 institutes and agencies within the U.S. Public Health
20 Service. The final draft of the report was reviewed
21 by the Assistant Secretary for Health and by the
22 Secretary, Department of Health and Human Services."

23 Does that accurately describe the development of
24 this report?

25 A. Yes, it does.

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1 Q. And you --

2 Can you tell us a little bit about your
3 responsibilities as the senior scientific editor for
4 this report.

5 A. Well I was really responsible for putting the
6 whole report together, so first of all I had to write
7 portions of the report, so I wrote significant
8 segments of the report. I also then had to work with
9 all 28 scientists and make sure they got their
10 manuscript in and more or less on time. I then took
11 the 28 manuscript and put them together in chapters
12 or subchapters so they went together. So, for
13 example, Dr. Samet wrote the part on lung problems
14 during adolescence, and I put that together with
15 someone else who had written about cardiovascular
16 problems, and those became sections.

17 Those were sent out to 34 scientists who had
18 specific expertise in certain areas of the report,
19 and when those -- those peer reviewers, those
20 scientists, then sent back their critiques and
21 questions and concerns and edits, and it was my
22 responsibility to attend to each and every one of
23 those concerns and edits. So that meant I might have
24 to go back and talk to scientists or try to come to
25 some way of -- of dealing with each edit.

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1 Then I put the whole report together, and then
2 that was sent out to 36 -- 36 senior scientists, and
3 again those senior scientists wrote all over it their
4 critiques. And that was sent back, and then my job
5 was to deal, again, with each and every concern they
6 had within the report.

7 Then that -- when that was accomplished, we had

8 a document that was -- went through technical
9 editing, and then it has to go through an approval
10 process. So first it has to be approved by the
11 Office on Smoking and Health, then the Center for
12 Disease Control, then the National Institutes of
13 Health, all the different like National Institute on
14 Drug Abuse, National Cancer Institute, then to the
15 Department of Health and Human Services, and if
16 anyone along the way had a concern, then I had to
17 deal with -- with that. And so the document was
18 finally done.

19 Q. How long did the process you're describing take?

20 A. It took two years.

21 Q. And --

22 A. So each of these takes at least two years to
23 write.

24 Q. And in the end was the Surgeon General's report
25 a consensus document?

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1 A. Yes. This report really represents, in the
2 process I just told you about, what the scientists
3 thought was the best science in this area as of -- as
4 of the writing of this report, 1994. So it was
5 considered the best science. And we had to all
6 agree; each level of government had to agree. Any
7 one level of government could veto the entire report.

8 Q. Would you turn in the report to the table of
9 contents, please. And can you tell us what are the
10 different topics covered in the table of contents in
11 the '94 Surgeon General's report.

12 A. Yes. I'll just go over the chapters. The
13 chapter titles.

14 The first chapter is just introduction and
15 summary. The second chapter dealt with all the
16 health consequences of tobacco use by young people
17 during adolescence, so that was during that time.
18 Chapter three had to do with the statistics, the
19 epidemiology of tobacco use. The third -- the fourth
20 chapter had to do with the psychosocial risk factors
21 for starting to smoke and the shaving tobacco use.
22 The fifth chapter dealt with tobacco advertising and
23 promotional activity. And then the sixth chapter,
24 efforts to prevent tobacco youth, things that had
25 been done before to try to prevent use among young

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1 people.

2 Q. So there was an entire chapter in this report on
3 tobacco advertising and promotional activities?

4 A. Yes, there was.

5 Q. Have you been involved in any Surgeon General's
6 reports since the publication of this 1994 Surgeon
7 General's report?

8 A. Yes. I've served as the senior scientific
9 reviewer on -- on one of the reports.

10 Q. When was the 1994 report published?

11 A. It was published in February of 1994.

12 Q. And when did our law firm first meet with you

13 about this case?
14 A. I first met with you in the fall of 1994.
15 Q. That would have been after the publication of
16 the '94 Surgeon General's report?
17 A. Yes, six or -- six or eight months.
18 Q. As part of your preparation in this case, have
19 you reviewed documents produced by the defendants in
20 this case which relate to youth smoking?
21 A. Yes, I have.
22 Q. How did you obtain those documents?
23 A. I asked counsel, I asked the lawyers for the --
24 for documents, so I asked for documents around
25 particular subjects. I wanted to see any documents
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1 that had data related to youth, anything that had
2 reports about marketing to youth, anything that had
3 research that was done with youth, and I wanted to
4 see cigarette advertisements. So those were the
5 areas that I directed that I wanted documents on.
6 Q. And when you say you asked counsel, that would
7 have been our law firm?
8 A. Yes, that would.
9 Q. Were the internal company documents which you
10 reviewed previously available to the public?
11 A. No, they weren't.
12 Q. Were those documents previously available to
13 researchers such as yourself?
14 A. No, they weren't.
15 Q. Were those documents available to you and your
16 colleagues when you were working on the 1994 Surgeon
17 General's report?
18 A. No, they weren't.
19 Q. Were you able to share these documents with your
20 colleagues?
21 A. No, I wasn't able to share them, and that was --
22 I actually wasn't able to talk about them to
23 anyone at all, and that was difficult, you wanted --
24 you can't talk about what you're working on, but also
25 because my colleagues are -- were very interested,
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1 this was the kind of information we -- we'd been
2 interested in for -- for quite a while.
3 Q. Do the tobacco company documents which you
4 reviewed contain new information on issues relating
5 to youth smoking?
6 A. Yes. The documents had an enormous amount of
7 new information, and I found the documents quite
8 shocking. They were shocking in that how explicit --
9 I was shocked at how explicit they were in terms
10 of targeting youth, particularly under-age youth.
11 Q. And --
12 MR. WEBER: Your Honor, I'm -- I'm sorry.
13 I'd object to the last part of that as non-responsive
14 and ask that it be stricken. The question was
15 whether the documents contained new information.
16 MS. WALBURN: And the answer was
17 responsive, entirely.

18 THE COURT: Well I think the last part of
19 it was not responsive. You can ask another question.
20 BY MS. WALBURN:
21 Q. Are you here, professor, to testify on your
22 opinions relating to the number of people, young
23 people who start smoking?
24 A. Yes, I am.
25 Q. Are you here to testify about why young people
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1 begin to smoke?
2 A. Yes, I am.
3 Q. And are you here to testify about the conduct of
4 the tobacco companies which affects youth smoking?
5 A. Yes, I am.
6 Q. Have you studied the onset of smoking; that is,
7 when and why young people start smoking?
8 A. Yes, I've studied that.
9 Q. And when is it that most people begin to smoke?
10 A. Most people begin to smoke during adolescence.
11 Q. And what does "adolescence" mean?
12 A. That's a good question, but "adolescence" means
13 ages -- it's the second decade of life, ages 10 to
14 20, or 10, 11 to 20.
15 Q. Are there different stages of adolescence?
16 A. Yes. There's three different stages. There's
17 young or early adolescence, generally 10 or 11 to
18 about age 14; there's middle adolescence, 14 to 17;
19 and then there's late or older adolescence, from
20 about 17 years old to age 20.
21 Q. And has there been research on adolescent
22 smoking?
23 A. There's been quite a bit of research on
24 adolescent smoking. Hundreds of studies.
25 Q. Why is that?

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1 A. Well because smoking is a public health problem
2 and leads to disease, and it starts in adolescence
3 and continues into adulthood. So smoking is
4 considered an epidemic among youth.
5 Q. What do you mean, professor, by "epidemic?"
6 A. I mean that it's a large problem, it's
7 widespread, it's not confined to a small subgroup.
8 It affects -- it affects our whole nation.
9 Q. Would you turn again to the '94 Surgeon
10 General's report on page five. And this lists the
11 major conclusions of the '94 Surgeon General's
12 report. Would you read the first conclusion of the
13 Surgeon General's report, please.
14 A. Yes. It says that "Nearly all first use of
15 tobacco occurs before high school graduation; this
16 finding suggests that if adolescents can be kept
17 tobacco-free, most will never start using tobacco."
18 Q. Do you agree with that conclusion?
19 A. I do.
20 Q. If you look at the total cigarette market, the
21 number of smokers of all ages, are youth a big
22 percentage of that market?

23 A. No, they're not a big percentage.
24 Q. What, then, is the significance of youth
25 smoking?

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1 A. The significance of youth smoking is that
2 they -- they start smoking, and so then they -- they
3 move in to the market; they are the replacement
4 smokers for those who quit or die.
5 Q. Has the federal government issued reports on the
6 numbers of teen-agers who start smoking?
7 A. Yes, they have.
8 Q. Would you turn in the book number two that's on
9 the ledge there to Exhibit 26065. This is a document
10 entitled "Preliminary Results from the 1996 National
11 Household Survey on Drug Abuse, U.S. Department of
12 Health and Human Services." Are you familiar with
13 this publication?
14 A. Yes, I am.
15 Q. And is this information which is in the public
16 domain?
17 A. Yes, it is.
18 Q. And is this considered reliable?
19 A. Yes. We use the National Household Survey on
20 drug abuse data for the Surgeon General's report.
21 It's part of our epidemiology chapter.

22 MS. WALBURN: Your Honor, we would offer
23 Exhibit 26065.

24 MR. WEBER: No objection, Your Honor.

25 THE COURT: The court will receive 26065,

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1 and it's time to recess.
2 THE CLERK: Court stands in recess, to
3 reconvene Monday morning at 9:30.
4 (Recess taken.)
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